

# **EXHIBIT B**

**WATER RIGHT NO.**  
**01-02017**

State of Idaho

License and Certificate of Water Right

Water License No. 4168  
Water District No. 70

Amount 1400 cfs. ft.  
Priority 9-5-1908

THIS IS TO CERTIFY that American Falls Power Company of Pocatello, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated September 3, 1908; that Permit No. 4168 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 6000 second feet, was issued thereunder on December 17, 1913, showing that said works were completed on the 26th day of November, 1913; and that on the 28th day of November, 1919,

Idaho Power Company of Boise, State of Idaho, made proof to the satisfaction of the Commissioner of Reclamation of Idaho, of a right to the use of the waters of Snake River, a tributary of Columbia River, for the purpose of generating electric power, under Use Permit No. 4168 of the Commissioner of Reclamation of Idaho, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the State Commissioner of Reclamation of Idaho and entered of record in Volume 5 of Licenses, at page 2529, on the 5th day of February, 1920;

The right hereby confirmed dates from September 3, 1908;

The Point of Diversion is located in the SW 1/4 SE 1/4, Sec. 30, T. 7 S., R. 31 E., B.M.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 1400 cubic feet per second.

Description and location of use: At the town of American Falls, Idaho.

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
	EAST SIDE ARBOR				

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation, this 5th day of February, 1920.

W. G. Svedgren  
Commissioner of Reclamation

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

**IN RE THE GENERAL ADJUDICATION  
OF RIGHTS TO THE USE OF WATER FROM  
THE SNAKE RIVER BASIN WATER SYSTEM**

CIVIL CASE NUMBER: 39356

Ident. Number: A01-02017

Date Received

Receipt Number

**NOTICE OF CLAIM  
TO A  
WATER RIGHT  
ACQUIRED UNDER STATE LAW**

Please type or print clearly

1. Name of Claimant (s) Idaho Power Company Phone ( 208 ) 383-2300Mailing Address P.O. Box 70, Boise, Idaho Zip 837022. Date of Priority (Only one (1) per claim) September 3, 1908Source of water supply (a) Snake River  
which is tributary to (b) Columbia River4. a. Location of existing point of diversion is: Township 7S Range 31E Section 30,  
1/4 of SW 1/4 of SE 1/4, Govt. Lot, B.M., County of Power

Additional points of diversion if any: \_\_\_\_\_

b. If instream flow, beginning point of claimed instream flow is:

Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4,

Govt. Lot \_\_\_\_\_ B.M., County of \_\_\_\_\_

ending point is: Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_  
1/4, Govt. Lot \_\_\_\_\_ B.M., County of \_\_\_\_\_5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),  
including the dates of any changes or enlargements in use, the dimensions of the diversion works as  
constructed and as enlarged and the depth of each well. American Falls Power Plant

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Power purposes from 1/1 to 12/31 amount 1,400 or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_

7. Total quantity claimed (a) 1,400 (cfs) and/or (b) \_\_\_\_\_ (acre feet)

8. Total consumptive use claimed is \_\_\_\_\_ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Power

10. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.  
b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	

Total number of acres irrigated N/A

11. In which county (ies) are lands listed above as place of use located? Power

12. Do you own the property listed above as place of use? Yes X No \_\_\_\_\_  
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.  
01-02032; 01-02046; transfer of rights 463 & 464; beneficial use claim for 136 cfs; permit application for 7,850 cfs or None ( )

14. Remarks: Idaho Power Company has filed, or will be filing the above-referenced adjudication claims and water rights applications for the American Falls power plant in conjunction with the development of the first American Falls Dam in 1927 and the subsequent 1976 dam replacement project, the Company also entered into various contracts and agreements that may be relevant to the Company's water right claims. The Company is in the process of reviewing those contracts and agreements along with Company and IDWR records to determine whether, in light of recent decisions in the SRBA Court, the filing of additional claims or the amendment of the above listed claims may be necessary to protect the Company's water rights at the American Falls plant.

Last Name Idaho Power Company Ident No. 01-02017

Copies: White -State, Yellow-Claimant

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Power purposes from 1/1 to 12/31 amount 1,400 or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_

7. Total quantity claimed (a) 1,400 (cfs) and/or (b) \_\_\_\_\_ (acre feet)

8. Total consumptive use claimed is \_\_\_\_\_ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Power

10. Description of place of use:

- a. If water is for Irrigation, indicate acreage in each subdivision in the tabulation below.  
b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	

Total number of acres irrigated N/A

Power

11. In which county (ies) are lands listed above as place of use located? \_\_\_\_\_

12. Do you own the property listed above as place of use? Yes X No \_\_\_\_\_  
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.  
01-02032; 01-02046; transfer of rights 463 & 464; beneficial use claim for 136 cfs; permit application for 7,850 c/f/s or None ( )

14. Remarks: Idaho Power Company has filed, or will be filing the above-referenced adjudication claims and water rights applications for the American Falls power plant in conjunction with the development of the first American Falls Dam in 1927 and the subsequent 1976 dam replacement project, the Company also entered into various contracts and agreements that may be relevant to the Company's water right claims. The Company is in the process of reviewing those contracts and agreements along with Company and IDWR records to determine whether, in light of recent decisions in the SRBA Court, the filing of additional claims or the amendment of the above-listed claims may be necessary to protect the Company's water rights at the American Falls plant.

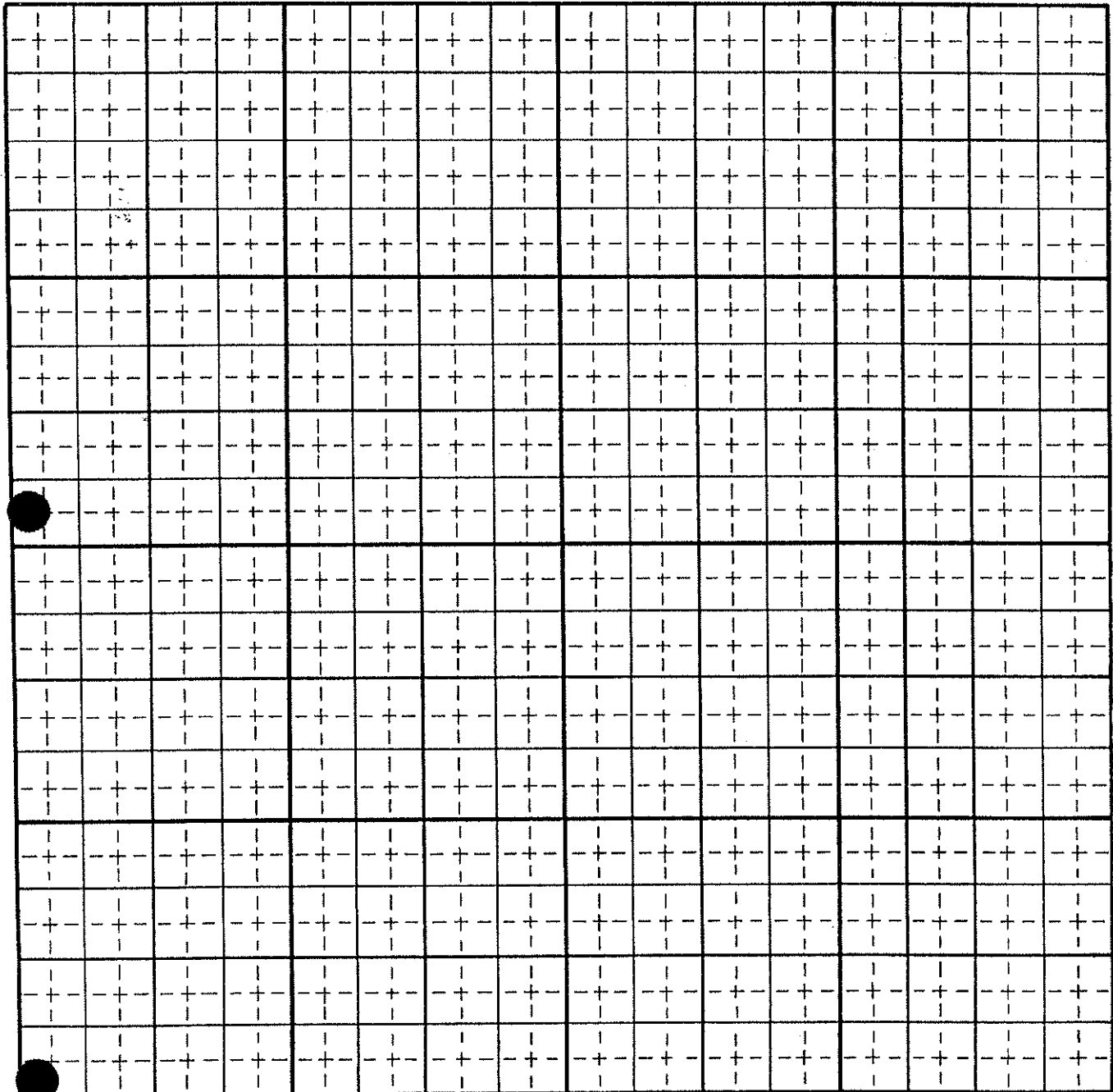
Last Name Idaho Power Company Ident No. 01-02017

Copies: White -State, Yellow-Claimant

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

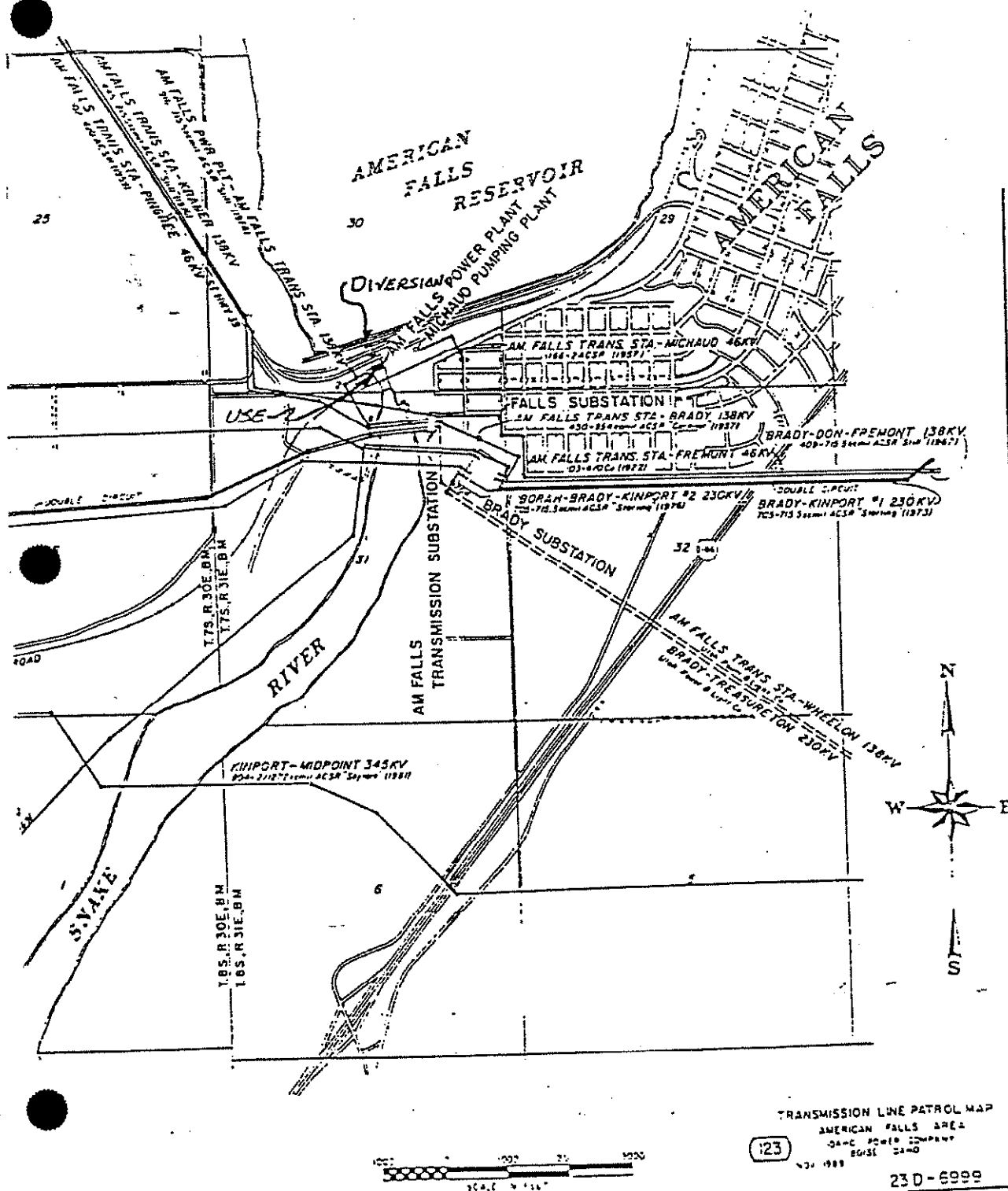
Scale: 2 inches equals 1 mile

(SEE ATTACHED)



Last Name Idaho Power Company Ident No. 01-02017

Copies: White-State, Yellow-Claimant





15. Basis of Claim (check one) Beneficial Use \_\_\_\_\_ Posted Notice \_\_\_\_\_ License X Permit \_\_\_\_\_  
Decree \_\_\_\_\_

If applicable provide IDWR Water Right Number 01-02017

Court \_\_\_\_\_ Case Number \_\_\_\_\_ Decree Date \_\_\_\_\_

Plaintiff vs Defendant \_\_\_\_\_

16. Signature (s)

(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do \_\_\_\_\_ do not \_\_\_\_\_ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments \_\_\_\_\_

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

For Organizations: I do solemnly swear or affirm that I am \_\_\_\_\_ Attorney \_\_\_\_\_ Title \_\_\_\_\_

of Idaho Power Company \_\_\_\_\_, that I have signed the foregoing

Organization

document in the space below as \_\_\_\_\_ Attorney \_\_\_\_\_ of Idaho Power Company

Title

Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent \_\_\_\_\_

Title and Organization Attorney, Idaho Power Company Date 10-18-96

State of Idaho/or \_\_\_\_\_ )  
County of Twin Falls ) SS.

Subscribed and sworn (or affirmed) before me this 18th day of October 19 96

SEAL

Notary Public Maureen Hart Steinkamp

Residing at Spading

My Commission Expires 12-17-97

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, James C. Tucker will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature James C. Tucker

Address P.O. Box 1906, Twin Falls, Idaho 83303-1906

Date 10-18-96

Last Name Idaho Power Company Ident. Number 01-02017

Copies White-State, Yellow-Claimant

**WATER RIGHT NO.**  
**01-02032**

State of Idaho  
License and Certificate of Water Right

Water License No. 14067  
Water District No. 36

Amount 4,600 sec. ft.  
Priority 2-8-1919

THIS IS TO CERTIFY that Idaho Power Company  
of Boise, Idaho, made application for a permit to appropriate the  
public waters of the State of Idaho, dated March 8, 19 19; that Permit No. 14067  
was issued under said application; that Certificate of Completion of works, with a carrying capacity of  
4,600 second feet, was issued thereunder on July 21, 19 24, showing that said works  
were completed on the 1st day of July, 19 24; and that on the 1st  
day of July, 19 24,

Idaho Power Company

of Boise, State of Idaho, made proof to the satisfaction of the  
Commissioner of Reclamation of Idaho, of the right to use the waters of Snake River  
a tributary of Columbia River, for the purpose of power  
under Use Permit No. 14067 of the Commissioner of Reclamation  
and that said right to the use of said waters has been perfected in accordance with the laws of  
Idaho, and is hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in  
Volume 6 of Licenses, at page 3175, on the 21st day of July, 19 24;

The right hereby confirmed dates from March 8, 19 19;

The Point of Diversion is located  
in the SW 1/4 SE 1/4 Sec. 30, Tp. 7 S., R. 31 E., N. M.  
County of Power.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes  
aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not  
exceed 4,600 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
			That the water is to be used for power purposes at the American Snake River Station, on the east side of Snake River, in Twp. 7 S. Range 31 E., in Township 7 South, Range 31 East, Boise Meridian.		

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of  
use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho,  
this 21st day of July, 19 24.

W. C. SWENDSEN  
Commissioner of Reclamation

**WATER RIGHT NO.**  
**01-02046**

7th Aug. F. - W. R.

State of Idaho  
Department of Water Administration

LICENSE OF WATER RIGHT

License of Water Right No. 16635/01-2046 Priority Oct. 15, 1926 Amount 2,000 cfs

THIS IS TO CERTIFY, that IDAHO POWER COMPANY  
of Boise, Idaho, has complied with the terms and conditions of Permit  
No. 16635/01-2046 issued pursuant to Application for Permit dated October 15, 1926  
and has submitted proof to the Department of Water Administration on January 18, 1933  
that he has applied water to a beneficial use; an examination by the Department indicates that the  
works have a capacity of 9,000 cfs and that the water has in fact been applied to a  
beneficial use; a right to the use of water from the Snake River  
tributary of the Columbia River is hereby confirmed in the following amounts:  
Amount 2,000 cfs for power from Jan. 1 to Dec. 31 (both dates inclusive)  
Amount \_\_\_\_\_ for generation from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
Amount \_\_\_\_\_ for \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
Subject, however, to the condition that no more than 2,000 cfs of water be diverted at  
any one time, said waters to be diverted within the \_\_\_\_\_

SW 1/4 Sec. 30, Twp. 7 S, Rge. 31 E, B. M.  
in the county of Power; and that the amount of water so diverted and to which such  
right is entitled and confirmed is for the purposes aforesaid and is limited to the amount which can  
actually be beneficially used and shall not exceed 1,447,590 acre feet per year ~~or~~

~~XXXXXX~~  
Description and location of place of use: American Falls Project

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
7 S	31 E	31	X																

Total number of acres irrigated \_\_\_\_\_

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands  
or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 23 day of

December, 19 71



R. H. Higgs  
Director

DEPARTMENT OF WATER ADMINISTRATION

Statehouse - Annex 2  
Boise, Idaho 83707  
(208) 384-2215



R. Keith Higginson  
Director

Water Rights Administration  
Water Resource Investigations  
Dam and Reservoir Safety  
Water Well Drilling  
Flood Plain Management  
Irrigation and  
Flood Control Districts

December 9, 1971

Idaho Power Company  
Box 30  
Boise, Idaho 83707

Gentlemen:

A representative of this department has made an examination of the works covered by your Permit No. 16635/01-2046 and has found the following:

Quantity of water diverted: 9,000 cfs

Amount of water that can be recognized as beneficially used under Idaho law: 2,000 cfs

The maximum quantity diverted shall not exceed 1,447,590 acre feet per season.

Beneficial Use: Power generation purposes within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec.

31, Twp. 7S, Rge. 31E, B.M. (American Falls Project)

Point of diversion: SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 30, Twp. 7S, Rge. 31E, B.M.

The priority date established is : October 15, 1926

If you do not concur with these findings, please advise us within 10 days; otherwise, a license will be issued as set forth in this letter.

Very truly yours,

*Bobby D. Fleenor*  
BOBBY D. FLEENOR  
Assistant Director

BDF:DR

**WATER RIGHT NO.**  
**01-07128**

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR PERMITIdent. No. 01-07128

To appropriate the public waters of the State of Idaho

1. Name of applicant Idaho Power Company Phone 388-2300  
Post office address P.O. Box 70, Boise, Idaho, 83702
2. Source of water supply Snake River which is a tributary of Columbia River
3. Location of point of diversion is \_\_\_\_\_  $\frac{1}{4}$  of SW  $\frac{1}{4}$  of SE  $\frac{1}{4}$ , Govt. Lot \_\_\_\_\_  
Sec. 30 Township 7S Range 31E B.M. Power County; additional  
points of diversion if any: \_\_\_\_\_
4. Water will be used for the following purposes:  
Amount 7,850 <sup>cfs</sup> for Power purposes from 1/1 to 12/31 (both dates inclusive)  
(cfs or acre-feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 7,850 and/or (b) \_\_\_\_\_  
cubic feet per second acre feet per annum
6. Proposed diverting works:
  - a. Description of ditches, flumes, pumps, headgates, etc. American Falls Power Plant  
\_\_\_\_\_  
\_\_\_\_\_
  - b. Height of storage dam \_\_\_\_\_ feet; active reservoir capacity \_\_\_\_\_ acre-feet; total  
reservoir capacity \_\_\_\_\_ acre-feet; period of year when water will be diverted to storage:  
\_\_\_\_\_ to \_\_\_\_\_ inclusive.
  - c. Proposed well diameter is \_\_\_\_\_ inches; proposed depth of well is \_\_\_\_\_ feet.
  - d. Is ground water with a temperature of greater than 85°F being sought? \_\_\_\_\_  
If well is already drilled, when? \_\_\_\_\_; Drilling firm \_\_\_\_\_;  
Well was drilled for (well owner) \_\_\_\_\_
7. Time required for the completion of the works and application of the water to be proposed beneficial use is  
existing project years (minimum 1 year).



8. Description of proposed uses (if irrigation only, go to item 9):

- a. Hydropower; show total feet of head and proposed capacity in KW. approx. 92,340 kw
- b. Stockwatering; list number and kind of livestock. \_\_\_\_\_
- c. Municipal; show name of municipality. \_\_\_\_\_
- d. Domestic; show number of households. \_\_\_\_\_
- e. Other; describe fully. power

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated N/A

10. Describe any other water rights used for the same purposes as described above. 01-02046; 01-02017;

01-02032; Transfer of Right Nos. 463 & 464; beneficial use claim for 136 c/f/s

11. a. Who owns the property at the point of diversion? Applicant

b. Who owns the land to be irrigated or place of use? Applicant

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. The U.S. owns and operates American Falls Dam. Applicant

has right to use of water discharged from dam pursuant to Falling Water Contract dated March 31, 1976.

12. Remarks: Idaho Power Company has filed, or will be filing the above-referenced adjudication claims and water right applications for the American Falls power plant. In conjunction with the development of the first American Falls Dam in 1927 and the subsequent 1976 dam replacement project, the Company also entered into various contracts and agreements that may be relevant to the Company's water right claims. The Company is in the process of reviewing these contracts and agreements, along with Company & IDWR records to determine whether, in light of recent decisions in the SRBA Court, the filing of additional claims or amendment of the above listed claims may be necessary to protect the Company's water rights at the

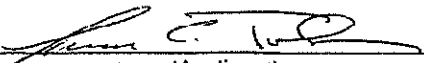
American Falls plant

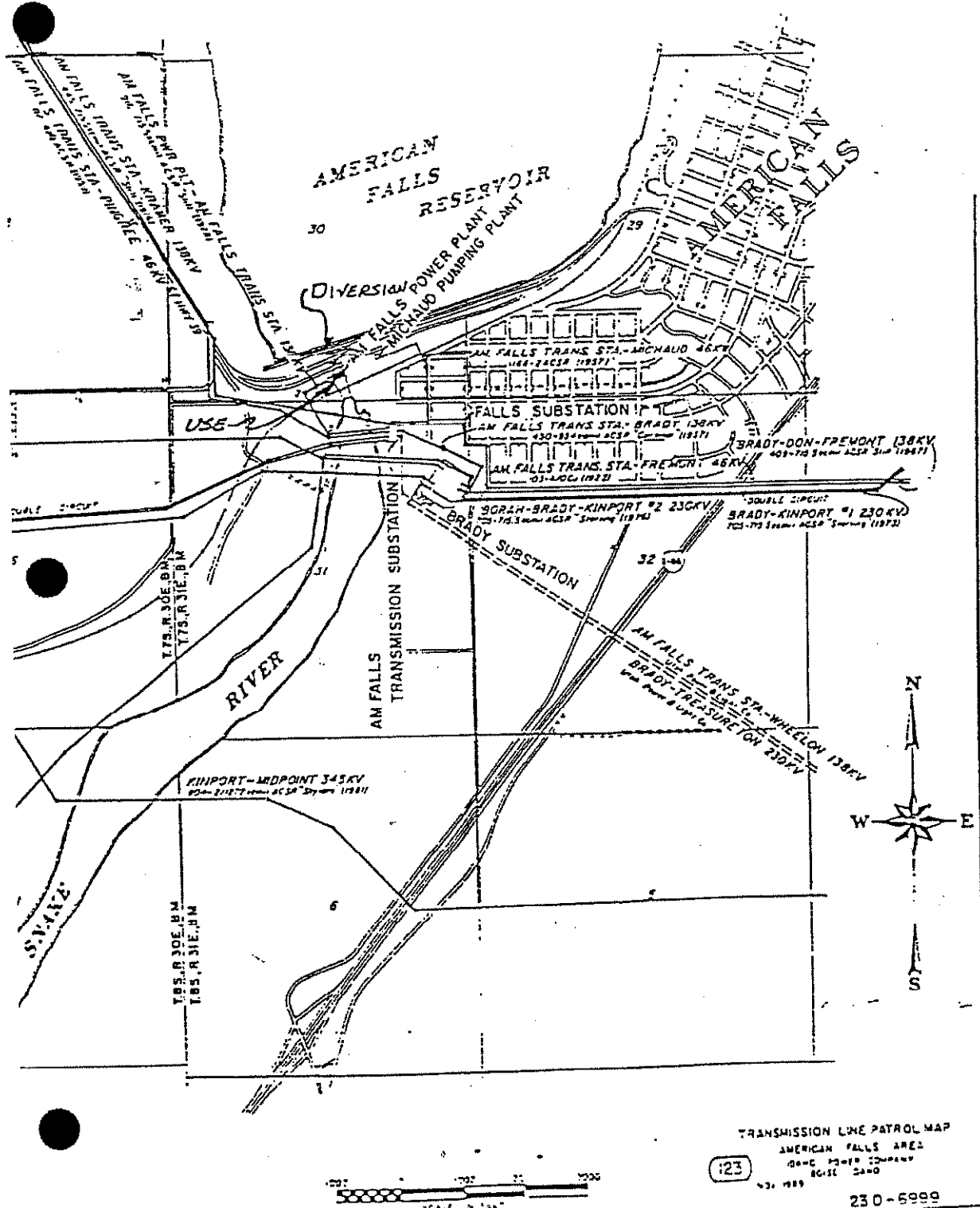
13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number. (SEE ATTACHED)

Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

IDAHO POWER COMPANY

By:   
James C. Tucker (Applicant)  
Attorney



Received by \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ Preliminary check by \_\_\_\_\_

Fee \$ \_\_\_\_\_ Received by \_\_\_\_\_ # \_\_\_\_\_ Date \_\_\_\_\_

Publication prepared by \_\_\_\_\_ Date \_\_\_\_\_ Published in \_\_\_\_\_

Publication approved \_\_\_\_\_ Date \_\_\_\_\_

### ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. \_\_\_\_\_, and said application is hereby \_\_\_\_\_.

1. Approval of said application is subject to the following limitations and conditions:

a. <sup>4</sup> SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before \_\_\_\_\_, 19 \_\_\_\_.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

**WATER RIGHT NO.**  
**01-10382**

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION  
OF RIGHTS TO THE USE OF WATER FROM  
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number

Ad-10382

Date Received

Receipt Number

NOTICE OF CLAIM  
TO A  
WATER RIGHT  
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Idaho Power Company Phone (208 ) 383-2670

Mailing Address P. O. Box 70 Boise, Idaho Zip 83707

2. Date of Priority (Only one (1) per claim) July 15, 1901

3. Source of water supply (a) Snake River  
which is tributary to (b) Columbia River

4. a. Location of existing point of diversion is: Township 7S Range 31E Section 30,  
1/4 of SW 1/4 of SE 1/4, Govt. Lot, E B.M., County of Power

Additional points of diversion if any: \_\_\_\_\_

b. If instream flow, beginning point of claimed instream flow is:

Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_, \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4,

Govt. Lot \_\_\_\_\_ B.M., County of \_\_\_\_\_

ending point is: Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_, \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_

\_\_\_\_\_ 1/4, Govt. Lot \_\_\_\_\_ B.M., County of \_\_\_\_\_

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),  
including the dates of any changes or enlargements in use, the dimensions of the diversion works as  
constructed and as enlarged and the depth of each well. American Falls Power Plant

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Power purposes from 1/1 to 12/31 amount 6,000 or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_

7. Total quantity claimed (a) 6,000 (cfs) and/or (b) \_\_\_\_\_ (acre feet)

8. Total consumptive use claimed is \_\_\_\_\_ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Power

10. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total number of acres irrigated N/A

11. In which county (ies) are lands listed above as place of use located? Power

12. Do you own the property listed above as place of use? Yes ☒ No ☐  
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above:  
01-02046; 01-02017; 01-02032; transfer right #463; beneficial use claim for 136 cfs; permit application for 7,850 cfs. or None ( )

14. Remarks: Idaho Power Company has filed or will be filing the above-referenced adjudication claims and water right applications for the American Falls power plant. In conjunction with the development of the first American Falls Dam in 1927 and the subsequent 1976 dam replacement project, the Company also entered into various contracts and agreements that may be relevant to the Company's water right claims. The Company is in the process of reviewing those contracts and agreements along with Company and IDWR records to determine whether in light of recent decisions in the SRBA Court, the filing of additional claims or the amendment of the above listed claims may be necessary to protect the Company's water rights at the American Falls plant.

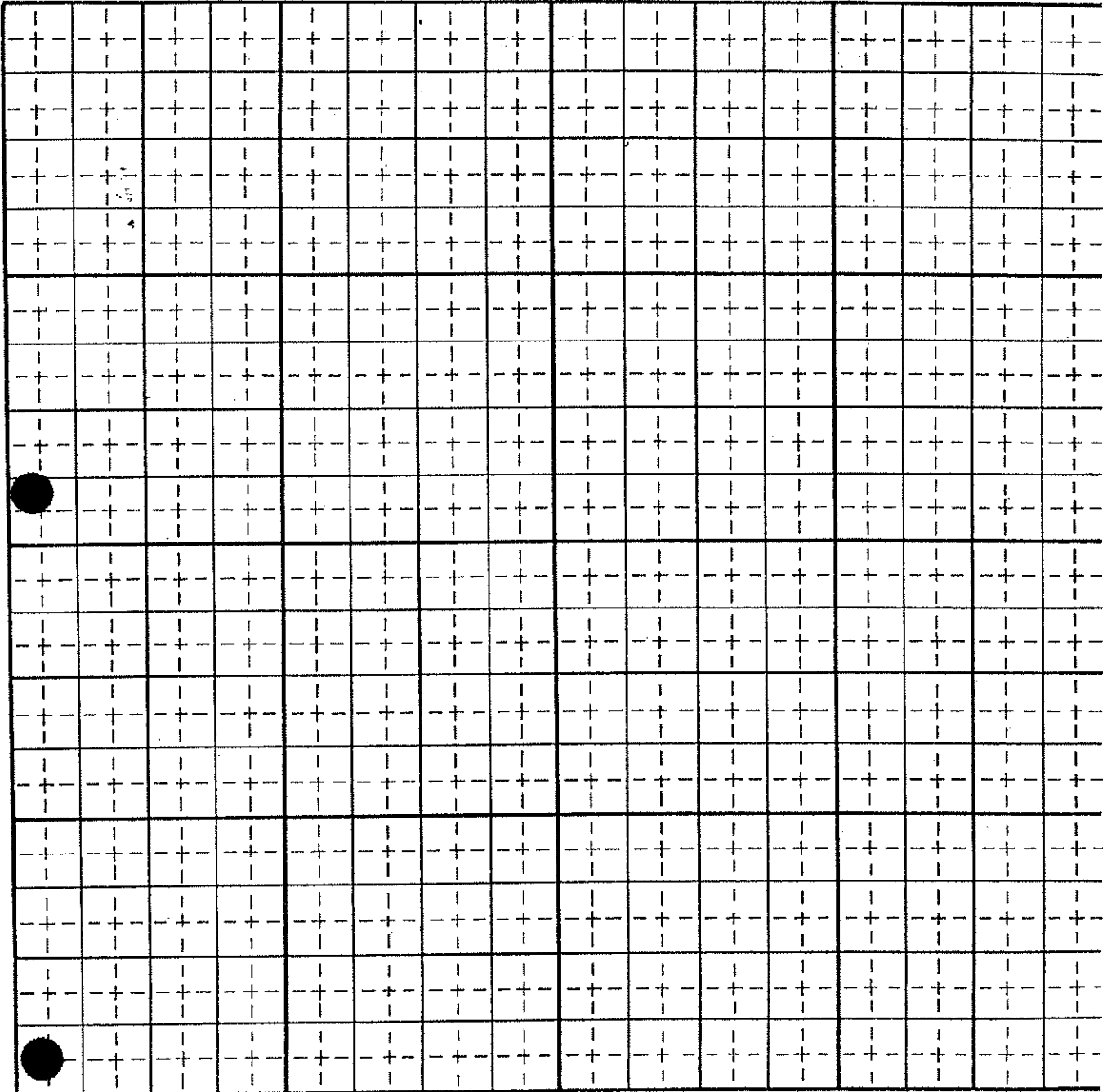
Last Name Idaho Power Company Ident No. \_\_\_\_\_

Copies: White -State, Yellow-Claimant

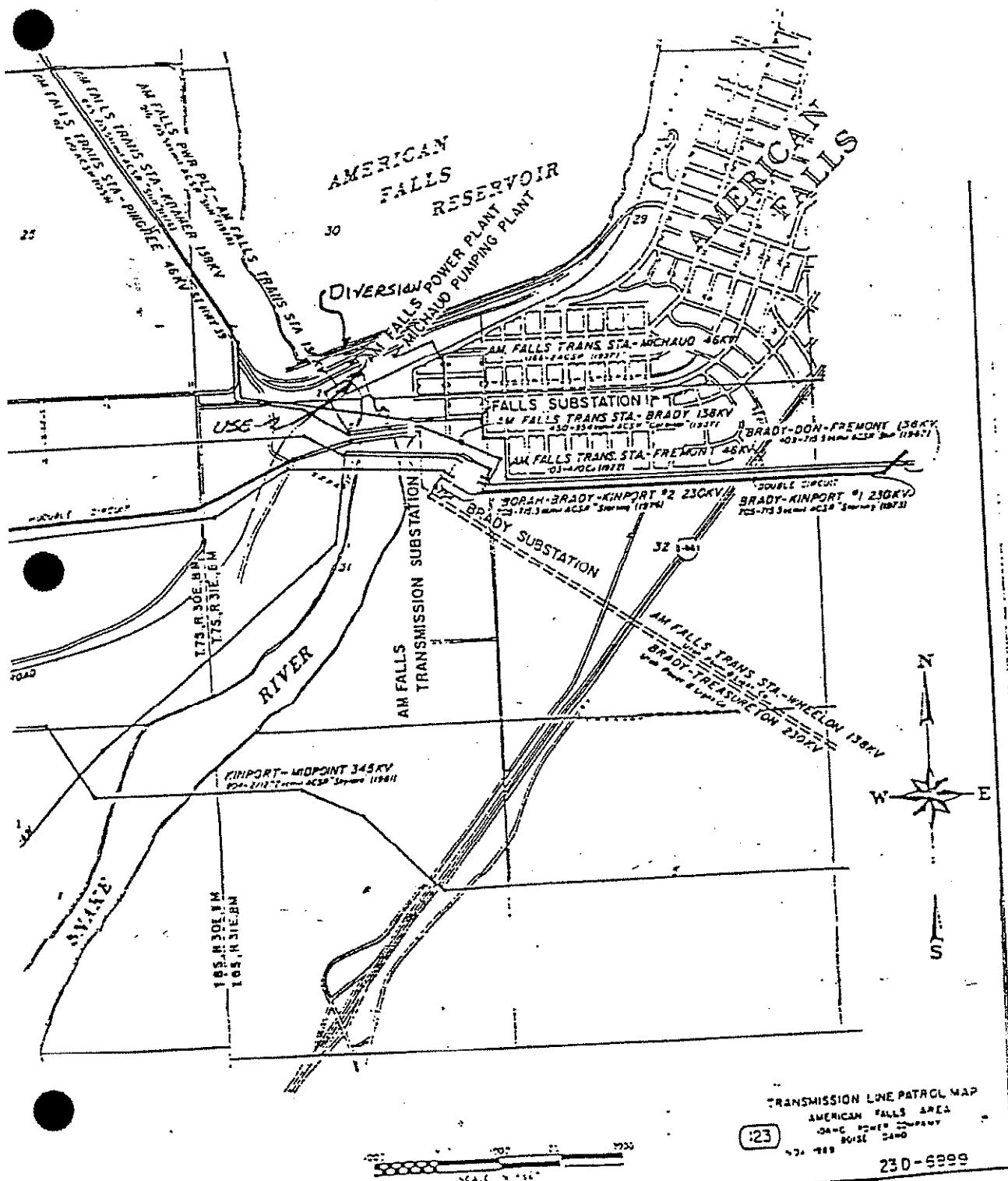
Map of Project: show clearly the point of diversion; place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

(SEE ATTACHED)







15. Basis of Claim (check one) Beneficial Use \_\_\_\_\_ Posted Notice X License \_\_\_\_\_ Permit \_\_\_\_\_  
Decree \_\_\_\_\_ Book 4, Water Rights, Pg.266, Blaine County (Exhibit  
If applicable provide IDWR Water Right Number Certificate of Water Right Transfer#464 (Exhibit B)  
Court \_\_\_\_\_ Case Number \_\_\_\_\_ Decree Date \_\_\_\_\_  
Plaintiff vs Defendant \_\_\_\_\_

16. Signature (s)  
(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled  
"How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do \_\_\_\_\_ do not \_\_\_\_\_  
wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments \_\_\_\_\_

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true  
and correct.

Signature of Claimant (s) \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date \_\_\_\_\_

For Organizations: I do solemnly swear or affirm that I am \_\_\_\_\_ Attorney  
of \_\_\_\_\_ Idaho Power Company \_\_\_\_\_, that I have signed the foregoing  
document in the space below as \_\_\_\_\_ Attorney \_\_\_\_\_ of \_\_\_\_\_ Idaho Power Company  
\_\_\_\_\_ Title \_\_\_\_\_ Organization \_\_\_\_\_  
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent James C. Tucker  
Title and Organization Attorney, Idaho Power Company Date 10-18-96

State of Idaho/or \_\_\_\_\_ )  
County of Twin Falls ) SS.

Subscribed and sworn (or affirmed) before me this 18th day of October 19 96

SEAL

Notary Public Sharon Hart

Residing at Gooding

My Commission Expires 12-17-97

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, James C. Tucker will be acting as attorney at law on behalf  
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above  
should be mailed to me at the address listed below.

Signature James C. Tucker

Address P.O. Box 1906, Twin Falls, ID 83303-1906

Date 10-18-96

Last Name Idaho Power Company Ident. Number \_\_\_\_\_

Copies White-State, Yellow-Claimant

depose and say that he is of lawful age and the appropriator and claimant of the Water Right described in the within and foregoing notice and whose name is subscribed thereto.

That the statements in said notice are true, and that the original notice, of which the foregoing is a true copy, was posted in a conspicuous place at or near the point of intended diversion at 7:15 o'clock P.M. the first day of August 1901.

Subscribed and sworn to before me this 10<sup>th</sup> day of August 1901.  
East A. L. Richardson, Clerk of the District Court, District of Idaho.

By Theo Turner, Deputy.  
Recorded at request of J. K. Brady at 1 o'clock P.M. August 12, 1901.  
By Geo. W. Egan, Deputy, H. E. Heard, County Recorder.

Snake River

Andrew J. Tarbet

Notice of Appropriation of Water.

Notice is hereby given that I, Andrew J. Tarbet, of Salt Lake City, State of Utah, do claim of the water of Snake River there flowing, six thousand (6,000) cubic feet per second of time.

That the point at which I intend to divert said water is American Falls, Blaine County, Idaho, in Lot 12, Section 30, Township 7 South, Range 34 East, Boise Meridian.

The purposes for which I claim the water are:  
For propelling pumping machinery, for generating electric power and light, for propelling pumping machinery, and for irrigation and domestic purposes.

The place where I intend to use the water is, Blaine County, Idaho.

The general course, length, destination and conduit by which I propose to divert said water is as follows;  
For mechanical purposes by a tunnel 420 feet, more or less in length, running partly through Sections 30 and 31, T. 7 S. R. 34 E. B. M., and by steel pipe 185 feet, more or less in length, for pumping purposes in the above named Section Township and Range.

For irrigation, by means of open canal 15 feet wide by 3 feet deep, running north and south, about 15 miles in length to irrigate all the lands in Sections 13, 14, 23, 24, 26, 35 and 36, in Township 7 South, Range 34 East, Boise Meridian; also Sections 1, 2, 9, 10, 11 and 16, in Township 8 South,

Range 30 East, Boise Meridian, also Sections 19, 30 and 31, in  
Township 7 South, Range 31 East, Boise Meridian.

That it is my intention to fully complete the appropriation of all the amount of water herein claimed in compliance with the Statute of the State of Idaho providing for the appropriation and diversion of water.

Andrew J. Tarbet.

Dated this 15th day of July, 1961.

Recorded at request of J. P. Rogers at 1<sup>2</sup> o'clock P.M. July 17, 1901.

Aples & M. Brod.

Deputy.

W. E. Beard,

County Recorder.

Notice of Water Right.

State of Idaho, ss.  
County of Blaine.

To all concerned notice is hereby given!

1st. That John Toombs, John H. Clendenen, Rhoda Bender, L. J. Porter, Emily J. Porter, Ella Buckner, Edwin Gillespie, John Martin, William M. Martin, Charles Samhart, James W. Eiler of Blackfoot, Idaho, hereby claim the use of the waters of the River to the extent of 60 cubic feet per second.

2d. He is intended to divert said water at or near  
where a copy of this notice is posted, and more definitely  
finitely described as follows: -

At a point on the west bank of Big Lost River at the center of the  $8\frac{1}{4} \times 8\frac{1}{4}$  of Section 4 T<sub>5</sub> N. R<sub>10</sub> E. S. 16 E. (For above description give legal subdivision of land or describe the place with reference to some prominent land mark <sup>or</sup> writer is intended to be

3d. The purpose for which said water is intended to be  
is domestic and agricultural purposes.

is domestic and as such is intended to be used in the place of the intended use in Dec. 6, 7, 18, 19. TP 37 R 268. Sec. TP 37 R 268. B. 21.

4th. It is intended to divert said water by means  
ditch or canal.

The general course of the proposed canal is south. The width of the proposed canal is about 12 miles.

The length of the proposed canal is about 1 1/2 miles.  
It is intended to use said water for irrigating described  
on the above described land.

Range 30 East, Boise Meridian; also Sections 19, 20 and 31  
Township 7 South, Range 30 East, Boise Meridian.

That it is my intention to fully complete the appropriation  
of all the amount of water herein claimed in compliance with  
the Statute of the State of Idaho providing for the appropriation  
and diversion of water.

Andrew J. Carhart

Dated this 15th day of July, 1901.

Recorded at request of J. C. Rogers at 7 o'clock P.M. July 17, 1901.

By J. C. Rogers,

Deputy.

W. E. Leard,

County Recorder.

### Notice of Water Right.

State of Idaho, 68,  
County of Blaine.

That all concerned notice is hereby given:

1st. That John Tromber, John W. Clemens, Rhoda Clemens,  
L. J. Porter, Emily J. Porter, Ella Luskina, Edna Gillespie Roberson,  
Martin, William P. Martin, Charles Samhart, James H. Stevens  
of Blackfoot, Idaho, hereby claim the use of the waters of Big Lost  
River to the extent of 60 cubic feet per second.

2d. It is intended to divert said water at or near the place  
where a copy of this notice is posted, and more definitely  
finitely described as follows:

At a point on the West bank of Big Lost River at or near  
the center of the  $SE\frac{1}{4}$  of Section 19, T. 7 N. R. 30 E. S. 19.  
(The above description gives legal subdivisions of land or describes  
the place with reference to some prominent land mark.)

3d. The purpose for which said water is intended to be used  
is domestic and agricultural purposes.

The place of its intended use is Sec. 6, 7, 18, 19 T. 7 N. R. 30 E. S. 19.  
T. 7 N. R. 30 E. S. 19.

4th. It is intended to divert said water by means of a  
ditch or canal.

The general course of the proposed canal is south westerly.  
The length of the proposed canal is about 12 miles.

It is intended to use said water for irrigating described land  
on the above described land.

5th. It is intended to have the works for diversion  
and use of said water as aforesaid completed within

B-Am.F.-W.R.

STATE OF IDAHO  
DEPARTMENT OF RECLAMATION  
Certificate of Water Right  
Transfer Right No. 464

This is to certify that Idaho Power Company, a corporation of the State of Maine, qualified to do business in the State of Idaho, claims a right to the use of 253 c.f.s. of the waters of Snake River for power purposes, initiated and perfected under and by virtue of that certain water location notice by Andrew J. Tarbet, dated July 15th, 1901, and recorded in Book 4 of Water Rights at Page 266 in the records of Blaine County, Idaho, now situated in Water District #36 of the County of Power, State of Idaho, to-wit, at the hydro-electric generating station on the west side of Snake River at American Falls, Power County, State aforesaid, sometimes known as "West Side Plant"; that Idaho Power Company has become the owner of the said water right by mesne conveyances and was until recently the owner of said West Side Plant; that the waters covered by said water right were diverted from said stream in the South Half of the South Half ( $3\frac{1}{2}3\frac{1}{2}$ ) of Section 30, Township 7 South, of Range 31 E., B.M., and conducted to the said West Side Plant and there used; that the said Company discontinued the use of said waters of the said water right as used at the said West Side Plant in June, 1927, and established a new place of use for such water on the east side of Snake River at American Falls, County and State aforesaid, at what is commonly known as the American Falls East Side Power Plant of Idaho Power Company; that the new point of diversion of said waters is North 69 degrees 30 minutes West 1872.3 feet from the Southeast Corner of Section 30, in Township 7 South, of Range 31 E., B.M., and such waters are conducted to said new place of use through the forebay of the American Falls East Side Power Plant of Idaho Power Company.

That upon the application of said Idaho Power Company for a transfer of water right made before the Commissioner of Reclamation of the State of Idaho, and said application having been granted, the right to the use of the said 253 c.f.s. of waters so initiated and perfected by and under said water location notice at the said new place of diversion and said new place of use be, and the same hereby is, acknowledged; that the right to the use of the waters aforesaid hereby acknowledged is restricted to said American Falls East Side Power Plant of Idaho Power Company, as provided by the laws of the State of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation of Idaho at Boise, Idaho, this 17th day of June, 1929.

  
Commissioner of Reclamation

STATE OF IDAHO, DEPARTMENT OF RECLAMATION

In the Matter of the Application of  
Idaho Power Company for Transfer of  
Water Right, Water District No. 36.

ORDER GRANTING TRANSFER

WHEREAS, on the 10th day of June, 1929, at the Department of Reclamation of Idaho, at Boise, Idaho, the matter of the application of Idaho Power Company for a transfer of water right came on regularly for hearing, pursuant to the published notice; and

WHEREAS, no one appeared at the hearing to protest the application, and the evidence submitted by the Applicant in support of its said application shows that no one shall be injured by said transfer; and

WHEREAS, the Watermaster of the district in which the old and new points of diversion and of use are located has approved said application;

IT IS, THEREFORE, HEREBY ORDERED that the said application for transfer of 255 c.f.s. of the waters of Snake River be granted and certificate issue to the Applicant herein; and

IT IS, THEREFORE, HEREBY FURTHER ORDERED that due notice of the hearing of said application has hereby been given.

IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of my office at Boise, Idaho, this 17th day of June, 1929.

  
Commissioner of Reclamation



**WATER RIGHT NO.**  
**01-10383**

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION  
OF RIGHTS TO THE USE OF WATER FROM  
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number AOI-10383

Date Received \_\_\_\_\_

Receipt Number \_\_\_\_\_

NOTICE OF CLAIM  
TO A  
WATER RIGHT  
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Idaho Power Company Phone (208 ) 383-2670

Mailing Address P.O. Box 70 Boise, Idaho Zip 83707

2. Date of Priority (Only one (1) per claim) August 1, 1901

3. Source of water supply (a) Snake River  
which is tributary to (b) Columbia River

4. a. Location of existing point of diversion is: Township 7S Range 31E Section 30,  
1/4 of SW 1/4 of SE 3/4, Govt. Lot, B.M., County of Power

Additional points of diversion if any: \_\_\_\_\_

b. If Instream flow, beginning point of claimed instream flow is:

Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_, 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4,

Govt. Lot \_\_\_\_\_ B.M., County of \_\_\_\_\_

ending point is: Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_, 1/4 of \_\_\_\_\_ 1/4 of

\_\_\_\_\_ 1/4, Govt. Lot \_\_\_\_\_ B.M., County of \_\_\_\_\_

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),  
including the dates of any changes or enlargements in use, the dimensions of the diversion works as  
constructed and as enlarged and the depth of each well. American Falls Power Plant

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Power purposes from 1/1 to 12/31 amount 2,000 or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_

7. Total quantity claimed (a) 2,000 (cfs) and/or (b) \_\_\_\_\_ (acre feet)

8. Total consumptive use claimed is \_\_\_\_\_ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Power

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	

Total number of acres irrigated N/A

11. In which county (ies) are lands listed above as place of use located? Power

12. Do you own the property listed above as place of use? Yes X No \_\_\_\_\_  
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.  
01-02017; 01-02046; 01-02032; transfer of right #464; beneficial use claim or None ( )  
for 136 cfs; permit application for 7,850 cfs.

14. Remarks: Idaho Power Company has filed or will be filing the above-referenced adjudication claims and water right applications for the American Falls power plant. In conjunction with the development of the first American Falls Dam in 1927 and the subsequent 1976 dam replacement project, the Company also entered into various contracts and agreements that may be relevant to the Company's water right claims. The Company is in the process of reviewing those contracts and agreements along with Company and IDWR records to determine whether, in light of recent decisions in the SRBA Court, the filing of additional claims or the amendment of the above listed claims may be necessary to protect the Company's water rights at the American Falls plant.

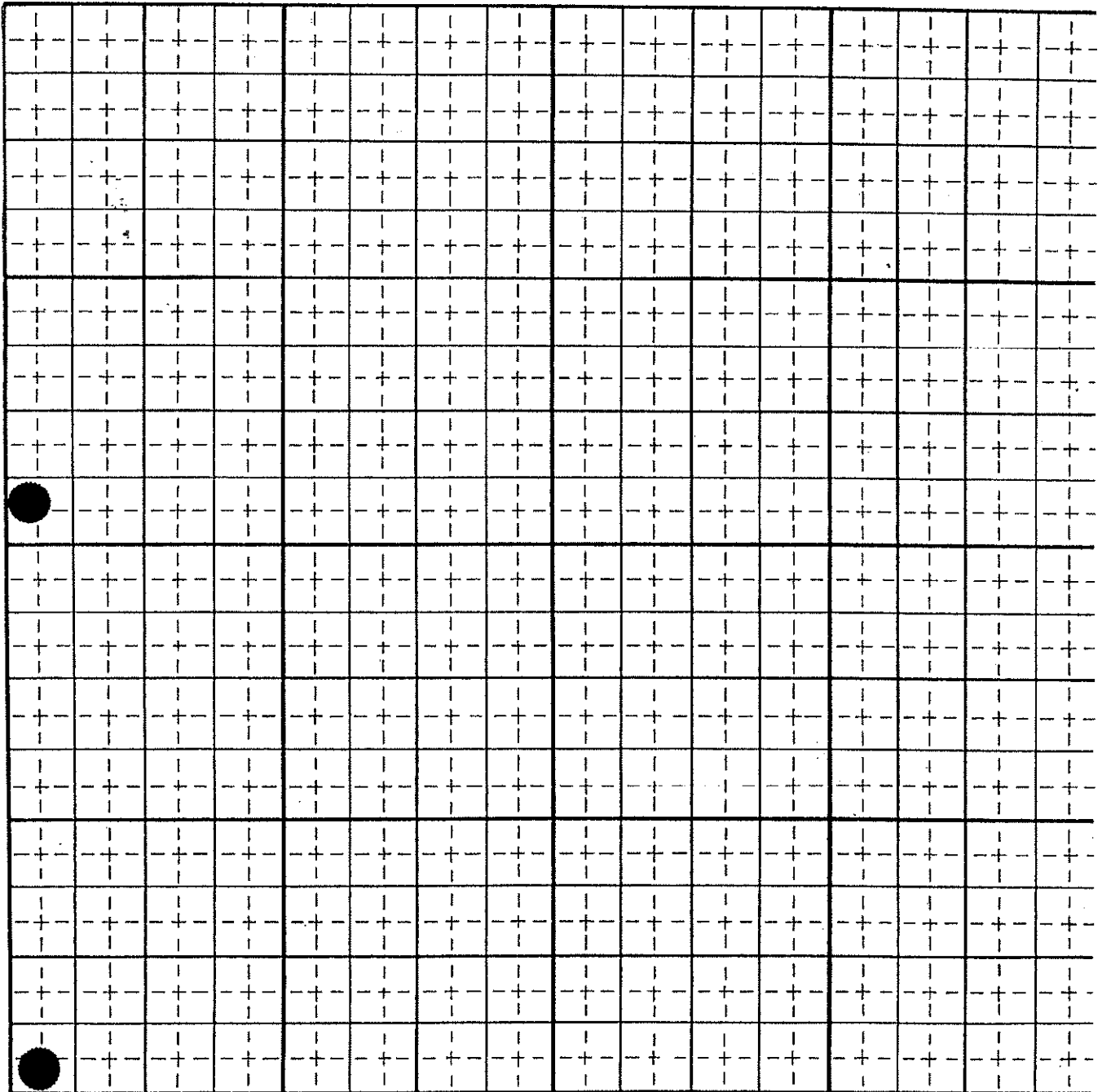
Last Name Idaho Power Company Ident No. \_\_\_\_\_

Copies: White -State, Yellow-Claimant

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

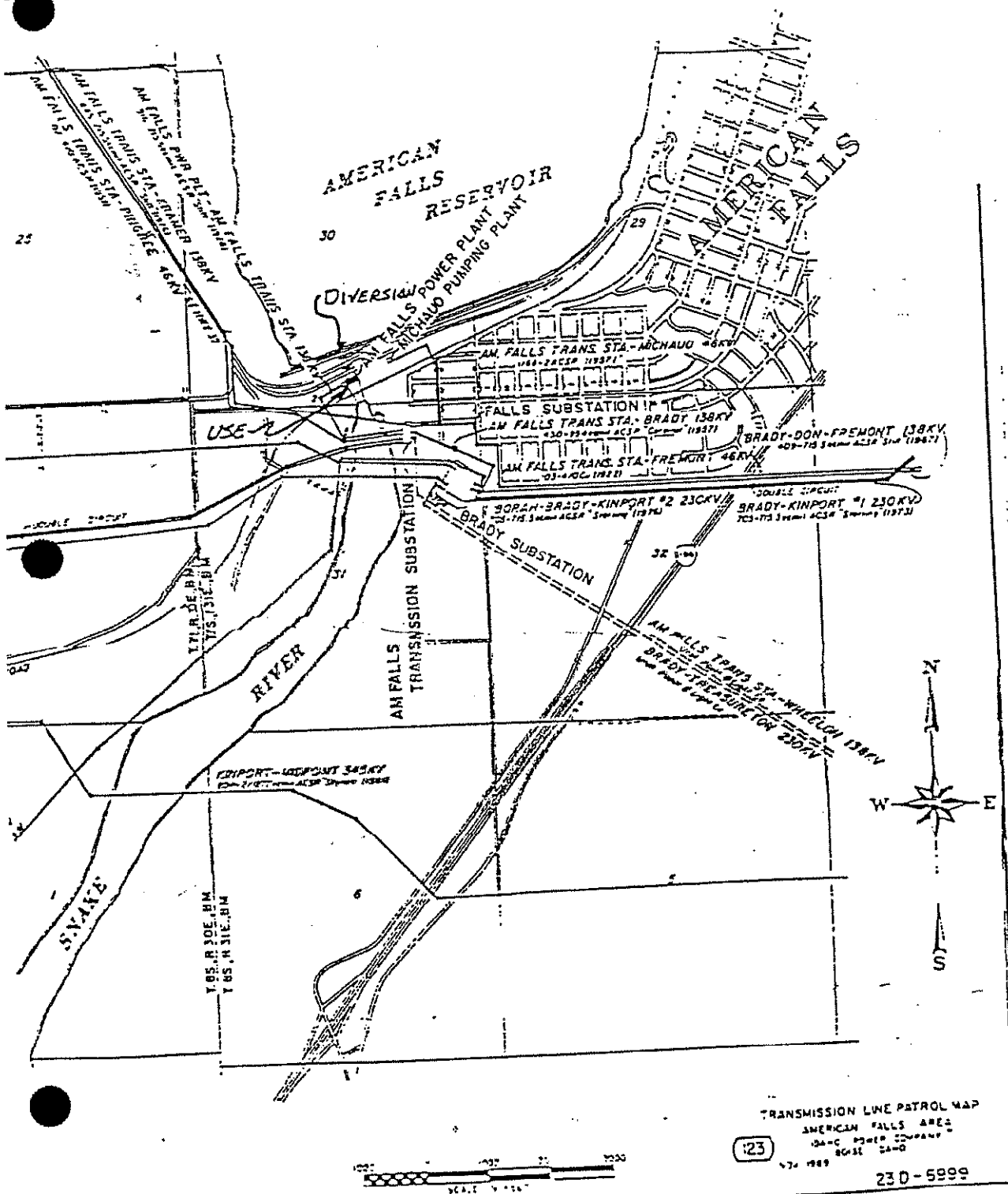
(SEE ATTACHED)



Last Name

Idaho Power Company Ident No.

Conifer White State Yellow Creek



15. Basis of Claim (check one) Beneficial Use \_\_\_\_\_ Posted Notice X License \_\_\_\_\_ Permit \_\_\_\_\_  
Decree \_\_\_\_\_ Book 4, Pg. 265, Blaine County (Exhibit A)  
If applicable provide IDWR Water Right Number \_\_\_\_\_ Certificate of Water Right Transfer No. 463 (Exhibit B)  
Court \_\_\_\_\_ Case Number \_\_\_\_\_ Decree Date \_\_\_\_\_  
Plaintiff vs Defendant \_\_\_\_\_

16. Signature (s)

(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled  
"How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do \_\_\_\_\_ do not \_\_\_\_\_  
wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments \_\_\_\_\_

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true  
and correct.

Signature of Claimant (s) \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date \_\_\_\_\_

For Organizations: I do solemnly swear or affirm that I am \_\_\_\_\_ Attorney \_\_\_\_\_  
Title \_\_\_\_\_  
of \_\_\_\_\_ Idaho Power Company \_\_\_\_\_, that I have signed the foregoing  
Organization \_\_\_\_\_  
document in the space below as \_\_\_\_\_ Attorney \_\_\_\_\_ of Idaho Power Company \_\_\_\_\_  
Title \_\_\_\_\_ Organization \_\_\_\_\_  
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent \_\_\_\_\_  
Title and Organization \_\_\_\_\_ Attorney, Idaho Power Company \_\_\_\_\_ Date 10-18-96

State of Idaho/or \_\_\_\_\_ )  
County of Twin Falls \_\_\_\_\_ ) SS.

Subscribed and sworn (or affirmed) before me this 18th day of October 19 96

SEAL

Notary Public Marlene Hart Stickleland

Residing at Gooding

My Commission Expires 12-17-97

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, James C. Tucker will be acting as attorney at law on behalf  
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above  
should be mailed to me at the address listed below.

Signature \_\_\_\_\_

Address P. O. Box 1906, Twin Falls, ID 83303-1906

Date 10-18-96

Last Name Idaho Power Company Ident. Number \_\_\_\_\_

Copies White-State, Yellow-Claimant

a true and correct copy, in a conspicuous place near the point of intended diversion described in said Notice to-wit:

At West end of O.S. L. R.R. Bridge about 4 rods to the right of track on fence post at bank of river, <sup>in Blaine County, Idaho.</sup> B.P. Randall.

Subscribed and sworn to before me this 19 day of March 1901.

W. A. Johanson

Justice of Peace

Recorded at Request of Geo Ingessoll Jr March 30, 1901 at 3<sup>rd</sup> Oct

W. E. Heard County Recorder.

By Geo A. Wood Deputy.

Snake River.

Notice of Water Right Location.

To whom it may concern:

Notice is hereby given, that J. Brady, of the City of Pocatello, County of Blaine, State of Idaho, has this First day of August, 1901, appropriated and hereby claim the use of water of Snake River to the extent of Two Thousand (2000) cubic feet per second, flowing at the point of intended diversion, which said point of intended diversion is particularly described as follows, to-wit:

At the head of the island of the R. Ry Bridge, at American Falls, Idaho and on the line of Blaine and Blaine County.

That the special purpose ~~or~~ purposes for which said water is claimed, is irrigation, mining, power, and domestic use.

The place of intended use is the City of Pocatello, Town of American Falls, and such other places in them as may require the use of water for the above named.

That the general purpose of the proposed canal is on each side of the Snake River, for such distance as may be required. That it is intended to complete the work.

The length of said proposed canal or conduit is approximately twenty miles. That it is intended to complete the work for the diversion and use of said water as aforesaid, within

five years. A copy of this notice was duly posted at or near the point of intended diversion, on the First day of August, 1901.

Witness my hand at Pocatello, County of Blaine, State of Idaho, this 11th day of August, 1901.

Appropriator and Claimant J. L. Brady.  
State of Idaho, ss.

depose and say that he is of lawful age and the appropriator and claimant of the Water Right described in the within and foregoing notice and whose name is subscribed thereto.

That the statements in said notice are true, and that the original notice, of which the foregoing is a true copy, was posted in a conspicuous place at or near the point of intended diversion at 7:15 o'clock P.M. the first day of August 1901.

J. K. Brady.

Subscribed and sworn to before me this 10<sup>th</sup> day of August 1901.

Test A. L. Richardson, Clerk of the District Court, District of Idaho.

By Theo Turner, Deputy.

Recorded at request of J. K. Brady at 1 o'clock P.M. August 12, 1901.

By Geo. A. Reed,

H. C. Hard,

Deputy.

County Recorder.

### Snake River

Andrew J. Tarkenton

#### Notice of Appropriation of Water.

Notice is hereby given that I, Andrew J. Tarkenton, of Salt Lake City, State of Utah, do claim of the water of Snake River there flowing, six thousand (6,000) cubic feet per second of time.

That the point at which I intend to divert said water is American Falls, Blaine County, Idaho, in Lot 12, Section 30, Township 7 South, Range 31 East, Boise Meridian.

The purposes for which I claim the water are:

For propelling pumping machinery, for generating electric power and light, for propelling pumping machinery, and for irrigation and domestic purposes.

The place where I intend to use the water is, Blaine County, Idaho.

The general course, length, destination and conduit by which I propose to divert said water is as follows; for mechanical purposes by a tunnel 420 feet, more or less in length, running partly through Sections 30 and 31, T. 7 S. R. 31 E. B. M., and by steel pipe 185 feet, more or less in length, for pumping purposes in the above named Section Township and Range.

For irrigation, by means of open canals 15 feet wide by 3 feet deep, running northerly and southerly about 15 miles in length to irrigate all the lands in Sections 13, 14, 23, 24, 26, 35, and 36, in Township 7 South, Range 30 East, Boise Meridian; also Sections 1, 2, 9, 10, 11 and 16, in Township 8 South,

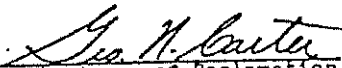


STATE OF IDAHO  
DEPARTMENT OF RECLAMATION  
Certificate of Water Right  
Transfer Right No. 463

This is to certify that Idaho Power Company, a corporation of the State of Maine, qualified to do business in the State of Idaho, claims a right to the use of 611 c.f.s. of the waters of Snake River for power purposes, initiated and perfected under and by virtue of that certain water location notice by J. H. Brady, dated August 1, 1901, and recorded in Book 4 of Water Rights at Page 265 in the records of Blaine County, Idaho, now situated in Water District #36 of the County of Power, State of Idaho, to-wit, at the hydro-electric generating station on the island in Snake River at American Falls, Power County, State aforesaid, sometimes known as "Island Plant"; that Idaho Power Company has become the owner of the said water right by means conveyances and was until recently the owner of said Island Plant; that the waters covered by said water right were diverted from said stream in the South Half of the South Half (S½S½) of Section 30, Township 7 South, of Range 31 E., B.M., and conducted to the said Island Plant and there used; that the said Company discontinued the use of the said waters of the said water right as used at the said Island Plant in June, 1927, and established a new place of use for such water on the east side of Snake River at American Falls, County and State aforesaid, at what is commonly known as the American Falls East Side Power Plant of Idaho Power Company; that the new point of diversion of said waters is North 69 degrees 30 minutes West 1872.3 feet from the Southeast Corner of Section 30, in Township 7 South, of Range 31 E., B.M., and such waters are conducted to said new place of use through the forebay of the American Falls East Side Power Plant of Idaho Power Company.

That upon the application of said Idaho Power Company for a transfer of water right made before the Commissioner of Reclamation of the State of Idaho, and said application having been granted, the right to the use of the said 611 c.f.s. of waters so initiated and perfected by and under said water location notice at the said new place of diversion and said new place of use be, and the same hereby is, acknowledged; that the right to the use of the waters aforesaid hereby acknowledged is restricted to said American Falls East Side Power Plant of Idaho Power Company, as provided by the laws of the State of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation of Idaho at Boise, Idaho, this 17th day of June, 1929.

  
Commissioner of Reclamation

STATE OF IDAHO, DEPARTMENT OF RECLAMATION

In the Matter of the Application of }  
Idaho Power Company for Transfer of } ORDER GRANTING TRANSFER  
Water Right, Water District No. 38. }

WHEREAS, on the 27th day of May, 1929, at the Department of Reclamation of Idaho, at Boise, Idaho, the matter of the application of Idaho Power Company for a transfer of water right came on regularly for hearing, pursuant to the published notice; and

WHEREAS, no one appeared at the hearing to protest the application, and the evidence submitted by the Applicant in support of its said application shows that no one shall be injured by said transfer; and

WHEREAS, the Watermaster of the district in which the old and new points of diversion and of use are located has approved said application;

IT IS, THEREFORE, HEREBY ORDERED that the said application for transfer of 611 c.f.s. of the waters of Snake River be granted and certificate issue to the Applicant herein; and

IT IS, THEREFORE, HEREBY FURTHER ORDERED that due notice of the hearing of said application has hereby been given.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office at Boise, Idaho, this 17th day of June, 1929.

  
Commissioner of Reclamation

**WATER RIGHT NO.**  
**01-10384**

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION  
OF RIGHTS TO THE USE OF WATER FROM  
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number

AO-10386

Date Received

Receipt Number

NOTICE OF CLAIM  
TO A  
WATER RIGHT  
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Idaho Power Company Phone ( 208 ) 383-2670

Mailing Address P. O. Box 70 Boise, Idaho Zip 83707

2. Date of Priority (Only one (1) per claim) January 1, 1929

3. Source of water supply (a) Snake River  
which is tributary to (b) Columbia River

4. a. Location of existing point of diversion is: Township 7S Range 31E Section 30,  
1/4 of SW 1/4 of SE 1/4, Govt. Lot, E B.M., County of Power

Additional points of diversion if any: \_\_\_\_\_

b. If instream flow, beginning point of claimed instream flow is:

Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_, \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4,

Govt. Lot \_\_\_\_\_ B.M., County of \_\_\_\_\_

ending point is: Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_, \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of

\_\_\_\_\_ 1/4, Govt. Lot \_\_\_\_\_ B.M., County of \_\_\_\_\_

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),  
including the dates of any changes or enlargements in use, the dimensions of the diversion works as  
constructed and as enlarged and the depth of each well. American Falls Power Plant

6. Water is claimed for the following purposes:

(both dates are inclusive) (cfs) (acre feet)

For Power purposes from 1/1 to 12/31 amount 136 or

For  purposes from  to  amount  or

For  purposes from  to  amount  or

For  purposes from  to  amount  or

7. Total quantity claimed (a) 136 (cfs) and/or (b)  (acre feet)

8. Total consumptive use claimed is  acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) power

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	

Total number of acres irrigated N/A

11. In which county (ies) are lands listed above as place of use located? Power

12. Do you own the property listed above as place of use? Yes X No   
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

01-02046;01-02032;01-02017;transfer of right nos.463 & 464, permit or None ( )  
application for 7,850 cfs

14. Remarks: Idaho Power Company has filed, or will be filing, the above-referenced adjudication claims and water right applications for the American Falls power plant. In conjunction with the development of the first American Falls Dam in 1927 and the subsequent 1976 dam replacement project, the Company also entered into various contracts and agreements that may be relevant to the Company's water right claims. The Company is in the process of reviewing those contracts and agreements, along with Company and IDWR records to determine whether, in light of recent decisions in the SRBA Court, the filing of additional claims or the amendment of the above listed claims may be necessary to protect the Company's water rights at the American Falls plant.

Last Name Idaho Power Company Ident No.

Copies: White -State, Yellow-Claimant

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Power purposes from 1/1 to 12/31 amount 136 or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_  
For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_

7. Total quantity claimed (a) 136 (cfs) and/or (b) \_\_\_\_\_ (acre feet)

8. Total consumptive use claimed is \_\_\_\_\_ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) power

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below:

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	

Total number of acres irrigated N/A

11. In which county (ies) are lands listed above as place of use located? Power

12. Do you own the property listed above as place of use? Yes X No \_\_\_\_\_  
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.  
01-02046; 01-02032; 01-02017; transfer of right nos. 463 & 464, permit or None ( )  
application for 7,850 cfs

14. Remarks: Idaho Power Company has filed, or will be filing, the above-referenced adjudication claims and water right applications for the American Falls power plant. In conjunction with the development of the first American Falls Dam in 1927 and the subsequent 1976 dam replacement project, the Company also entered into various contracts and agreements that may be relevant to the Company's water right claims. The Company is in the process of reviewing those contracts and agreements, along with Company and IDWR records to determine whether, in light of recent decisions in the SRBA Court, the filing of additional claims or the amendment of the above rights claims may be necessary to protect the Company's water rights at the American Falls pl.

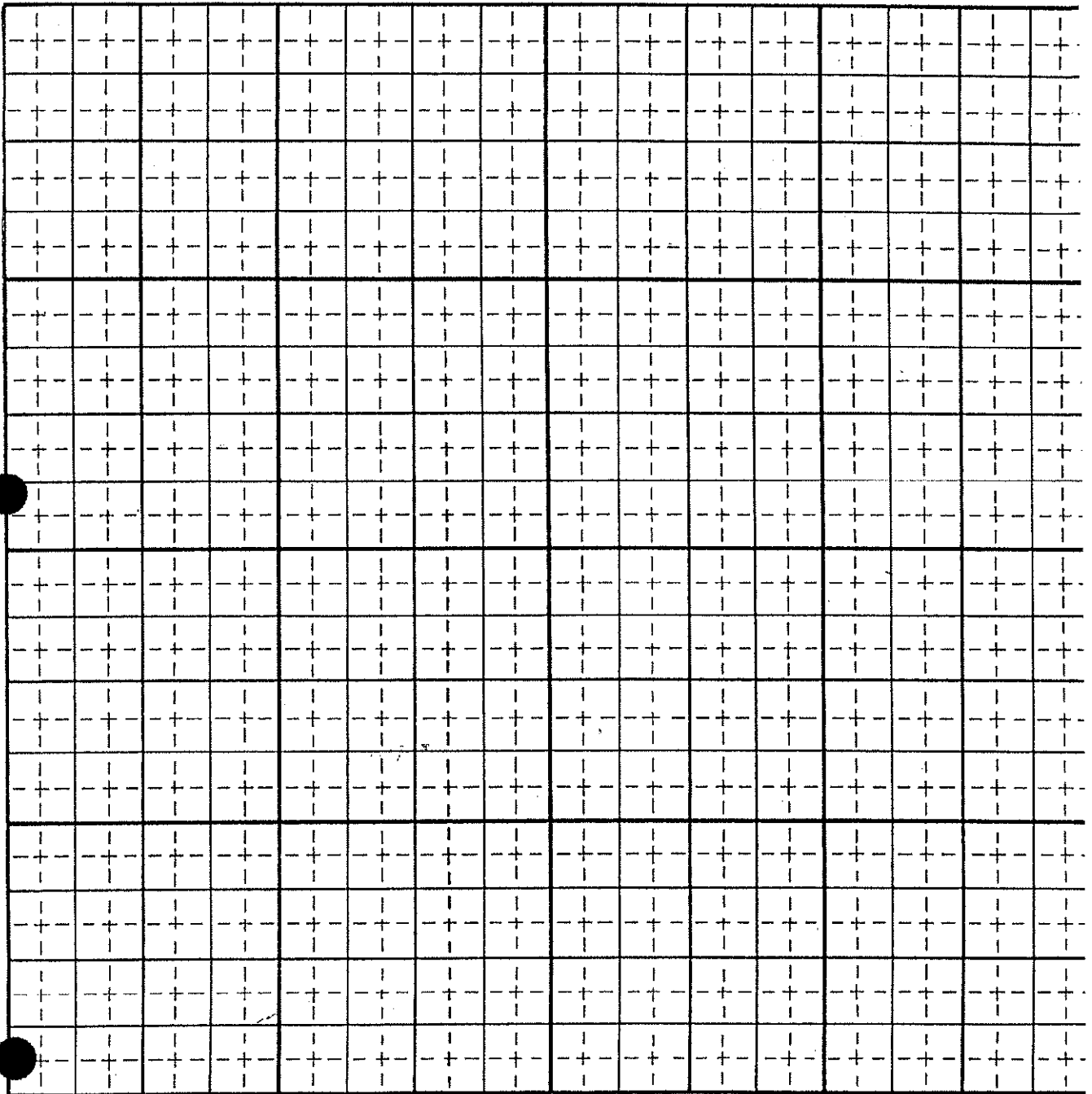
Last Name Idaho Power Company Ident No. \_\_\_\_\_

Copies: White-State, Yellow-Claimant

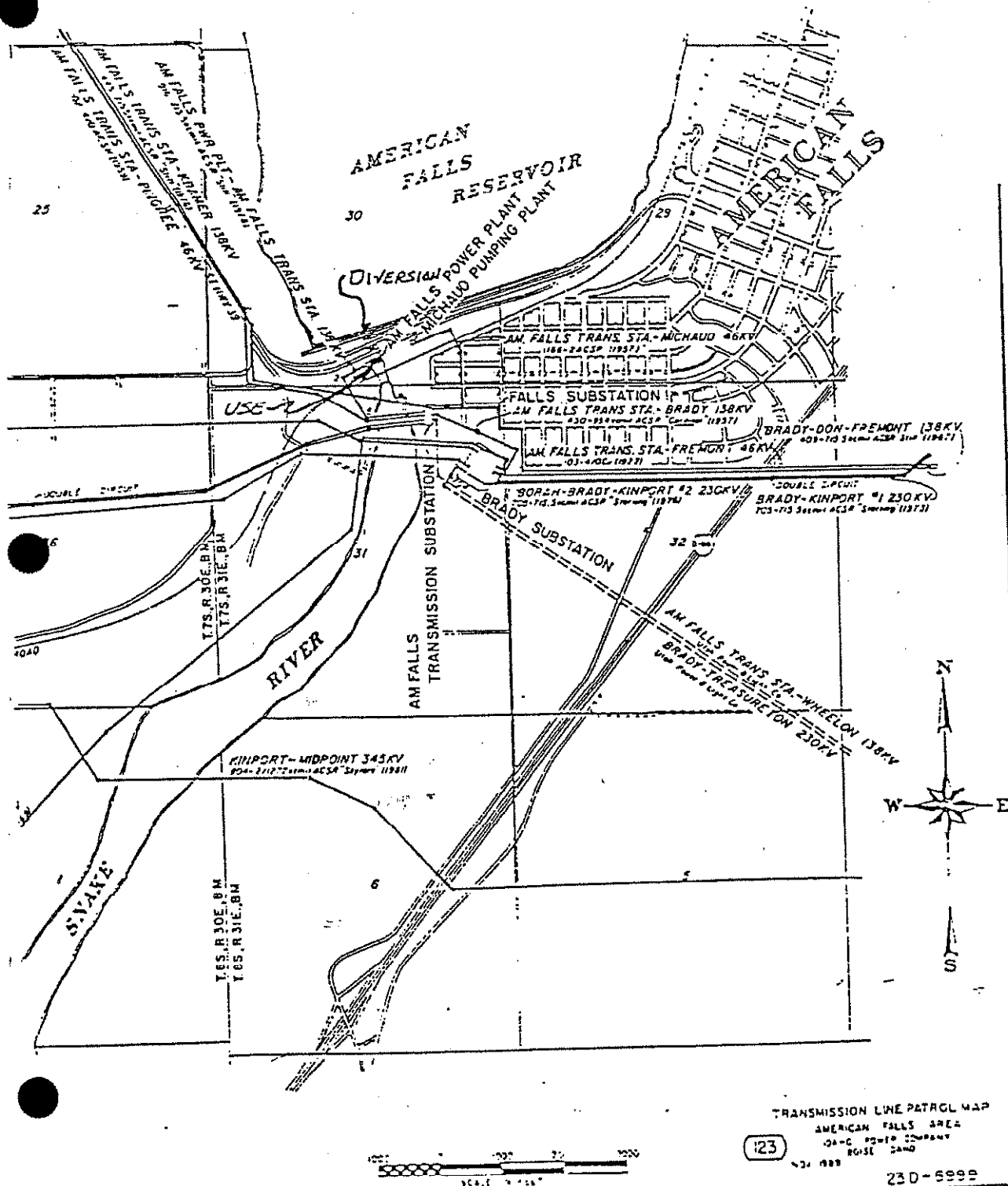
Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

(SEE ATTACHED)







15. Basis of Claim (check one) Beneficial Use X Posted Notice \_\_\_\_\_ License \_\_\_\_\_ Permit \_\_\_\_\_  
Decree \_\_\_\_\_

If applicable provide IDWR Water Right Number \_\_\_\_\_  
Court \_\_\_\_\_ Case Number \_\_\_\_\_ Decree Date \_\_\_\_\_  
Plaintiff vs Defendant \_\_\_\_\_

16. Signature (s)

(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled  
"How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do \_\_\_\_\_ do not \_\_\_\_\_  
wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments \_\_\_\_\_

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true  
and correct.

Signature of Claimant (s) \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date \_\_\_\_\_

For Organizations: I do solemnly swear or affirm that I am \_\_\_\_\_ Attorney \_\_\_\_\_  
Title \_\_\_\_\_  
of \_\_\_\_\_ Idaho Power Company \_\_\_\_\_, that I have signed the foregoing  
Organization \_\_\_\_\_  
document in the space below as \_\_\_\_\_ Attorney \_\_\_\_\_ of \_\_\_\_\_ Idaho Power Company \_\_\_\_\_  
Title \_\_\_\_\_ Organization \_\_\_\_\_  
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent \_\_\_\_\_  
Title and Organization \_\_\_\_\_ Attorney, Idaho Power Company \_\_\_\_\_ Date \_\_\_\_\_ 10-18-96

State of Idaho/or \_\_\_\_\_ )  
County of \_\_\_\_\_ Twin Falls \_\_\_\_\_ ) SS.

Subscribed and sworn (or affirmed) before me this \_\_\_\_\_ 18th \_\_\_\_\_ day of \_\_\_\_\_ October \_\_\_\_\_ 19 96

SEAL

Notary Public \_\_\_\_\_ Maureen Jane Strickland

Residing at \_\_\_\_\_ Hooding

My Commission Expires \_\_\_\_\_ 12-17-97

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, \_\_\_\_\_ James C. Tucker \_\_\_\_\_ will be acting as attorney at law on behalf  
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above  
should be mailed to me at the address listed below.

Signature \_\_\_\_\_

Address \_\_\_\_\_ P.O. Box 1906, Twin Falls, ID 83303-1906

Date \_\_\_\_\_ 10-18-96

Last Name \_\_\_\_\_ Idaho Power Company Ident. Number \_\_\_\_\_

Copies White-State, Yellow-Claimant

# **EXHIBIT C**

ROSHOLT, ROBERTSON & TUCKER

Chartered  
ATTORNEYS AT LAW

JOHN A. ROSHOLT  
J. EVAN ROBERTSON  
JAMES C. TUCKER  
GARY D. SLETTE  
JERRY V. JENSEN  
BRUCE M. SMITH  
JOHN K. SIMPSON  
PATRICK D. MADIGAN  
TIMOTHY J. STOVER  
NORMAN M. SEMANKO

Twin Falls Office  
142 3rd Ave. North  
P.O. BOX 1906  
TWIN FALLS, IDAHO 83303-1906  
TELEPHONE (208) 734-0700  
FAX (208) 736-0041

Boise Office  
1221 WEST IDAHO, SUITE 600  
P.O. BOX 2139  
BOISE, IDAHO 83701-2139  
TELEPHONE (208) 336-0700  
FAX (208) 344-6034

October 23, 1996

Idaho Department of Water Resources  
1301 North Orchard  
Statehouse Mail  
Boise, ID 83720

HAND DELIVERED TO SOUTHERN REGION  
IDAHO DEPARTMENT OF WATER RESOURCES  
TWIN FALLS, IDAHO

ATTN: Karl Dreher, Director  
Dave Tuthill, Adjudication Bureau Chief

Gentlemen:

Please find enclosed the following water right application and adjudication claims which we have presented for filing on this date on behalf of the Idaho Power Company:

- 1) Application for Permit - 7,850 cfs for power purposes @ American Falls;
- 2) Notice of Claim - 1,400 cfs for power purposes @ American Falls;
- 3) Notice of Claim - 6,000 cfs for power purposes @ American Falls;
- 4) Notice of Claim - 2,000 cfs for power purposes @ American Falls;
- 5) Notice of Claim - 136 cfs for power purposes @ American Falls; and
- 6) Notice of Claim - 3,500 cfs for power purposes @ Bliss power plant.

These filings are being made to supplement previous filings by the Company based upon the results of hydraulic capacity tests completed by the Company at various power facilities. These capacity tests were initiated in an effort to verify the previous SRBA claims filed by the Company. Tests at all of the Company's facilities have not been completed and further amended or supplementary filings may be forthcoming.

FILE

The filings at American Falls are further complicated, and in many respects necessitated, by the history of the development of the American Falls Reservoir and the adjudication filings for that facility made by the United States. Our review of pertinent records indicates that prior to the construction of the first American Falls Dam in 1927, the Company owned and operated three small power plants at American Falls, the West Side, Island, and East Side Plants. The diversion structure at the East Side Plant was capable of diverting 6,000 cfs in 1920. Permit No. 4168 was licensed in 1920 for 1,400 cfs, and Permit No. 14067 in 1924 for 4,600 cfs to make up the difference. In 1921, the Company filed an application to appropriate an additional 1,200 cfs for power purposes (Permit No. 15201/01-2041), along with an application for a permit to store 300,000 AF of water at the American Falls site. (Permit No. R-273/01-2065.) In each case, permits were subsequently issued to the Company.

About that same time, the Bureau of Reclamation became interested in the American Falls area as a reservoir site for the Minidoka Project. On June 15, 1923, the United States and the Company entered into a contract by which the United States acquired a portion of the Company's land and the water rights for the development of the American Falls site (The actual deed is dated April 13, 1926). This included the West Side and Island power plants. The Company retained the East Side Plant. The 1923 contract provided, among other things, that the Company was to acquire 45,000 AF of primary storage and 255,000 AF of "secondary storage" along with the right to use the water discharged from the dam for power production in the East Side Plant. The East Side power plant was not connected to the dam, so it made no use of the extra head created by the impoundment.

With the construction of the American Falls Dam in 1927, the capacity at the East Side Plant was increased to 9,000 cfs, and the corresponding the water rights consisted of the following:

1.       253 cfs               With a priority date of July 15, 1901, transferred from the West Side Plant to the East Side Plant on June 17, 1929, by transfer No. 464;
2.       611 cfs               With a priority date of August 1, 1901, transferred from the Island Plant to the East Side Plant on May 4, 1929, by transfer No. 463;
3.       1,400 cfs             Permit No. 4168, with a priority date of September 3, 1908, licensed in 1920 to American Falls Power Company, No. 01-02017;

4.	4,600 cfs	Permit No. 14067, with a priority dated of March 8, 1919, licensed in 1924, No. 01-02032;
5.	2,000 cfs	Permit No. 16635, with a priority dated of October 15, 1926, licensed in 1971, No. 01-02046;
	<hr/> 8,864 cfs	TOTAL

The Company has previously filed adjudication claims on two of the licensed rights, Nos. 4 and 5 above (Water Right Nos. 01-02032 and 01-02046). Adjudication claims for Nos. 1 and 2 (the 1901 rights), No. 3 (No. 01-02017) along with a beneficial use claim for the 136 cfs necessary to bring the total water rights at the facility to 9,000 cfs are part of the current filing.<sup>1</sup>

Permit Nos. 01-2041 and 01-2065, the permits issued to the Company for the 1200 cfs flow right and 300,000 AF storage right, respectively, were never licensed. In 1971, the Department of Water Administration (DWA) gave to the Company notice of its intention to cancel each of those permits for non-development. The Company opposed the cancellation based on provisions in the 1923 Contract, contending that the Company reserved its water rights at the American Falls site. The 1923 Contract, immediately following the provision transferring the Company's water rights to the U.S., provided:

But it is expressly agreed and understood that the water rights and rights to the use of water which it is herein agreed that the Company shall have are reserved out of its existing appropriations and rights as independent rights under its own filings and appropriations and of the dates of priority to which the Company is entitled under such appropriations and are not to be considered as mere contract rights under contract with the United States. (1923 Contract, para 9(d), at p. 11)

Despite that language, the DWA decided that both permits should be canceled. In his written decision, the then director, R. Keith Higginson, stated:

After reviewing the files of the Department and the answer of the Idaho Power Company, the Director finds that the rights established by the Idaho Power Company, by reason of Permit Nos. 01-2041 and 01-2065, have been merged with rights granted the United States of America and that by

---

<sup>1</sup> You will note that the filings for the rights listed as Nos. 1 & 2 claim are for 6,000 cfs and 2,000 cfs, respectively. Although the Company only transferred the amounts listed above (253 and 611 cfs) to the East Side Plant, the balance of each right is included in the respective claim based on Judge Hurlbutt's recent decision in Basin-Wide # 10.

reason of contracts and agreements entered into between the Company and the United States of America, Bureau of Reclamation, *those rights are held in trust for use by the Company under the water rights of the United States at American Falls Reservoir.*

The Director further finds that since *the Company's rights to water at American Falls Dam and Reservoir are already covered by reason of licenses issued to the United States of America, under Permit Nos. R-269 and 4168<sup>2</sup> and contracts between the Company and the United States of America*, that Permit Nos. 01-2041 and 01-2065 are duplicate and should be canceled. The Company has failed to submit proof that it has constructed the necessary works to divert the water and apply it to beneficial use. (emphasis added)

In 1972, storage behind the American Falls Dam was restricted for safety reasons. This led to a non-governmental replacement program whereby the Company guaranteed bonds issued by the American Falls Reservoir District (AFRD) for reconstruction of the Dam in exchange for the right to connect its power plant directly to the Dam and use the water released from the Dam to generate power. On March 31, 1976 a contract (the "Government Contract") was entered into between AFRD and the United States. In that contract the United States acknowledged the existence of a "falling water contract" between AFRD and the Company and agreed that the Company could use the water released from the Dam, subject to the other provisions of the contract, for power generation purposes. (Government Contract, Art 18, p. 6) The Government Contract, and the use of the falling water, was authorized by the American Falls Enabling Act of December 28, 1973 (P.L. 93-206, 87 Stat. 904). Pursuant to the Government Contract and the Act, the AFRD, as the constructing agency, and the Company entered into a Falling Water Contract which authorized the Company to utilize the water discharged from the Dam in accordance with the Government Contract. (Falling Water Contract, Sec. 3.1, p. 13.) Also on March 31, 1976, the United States, AFRD and the Company entered into a Placeholder Contract which provided:

Nothing herein shall in any way alter or change the present proportion of the storage rights of the placeholder, and this Placeholder Contract and the American Falls Replacement Dam Program constitute a reaffirmation by the United States of the rights of the placeholder under the Existing Placeholder Contract, except as modified by this Placeholder Contract as authorized in the Act of December 28, 1973, and the Government Contract. The provisions of

---

<sup>2</sup>. Permit No. 4168 for 1400 cfs was licensed to American Falls Power Company in 1920 and is one of the SRBA claims being contemporaneously filed by the Company. R-269 is current license #01-02064, held by the U.S., for 1.8 MAF of storage for irrigation and power purposes. The U.S. has filed an adjudication claim for this water right but did not include power as a purpose of use. See SRBA clm. # A01-02064.

the Existing Spaceholder Contract shall in all respects remain in full force and effect except that the provisions of this Spaceholder Contract with respect to the Replacement Dam, including but not limited to the operation and maintenance thereof and the distribution of water therefrom, shall prevail over the provisions of the Existing Spaceholder Contract wherever and to whatever extent the provisions of the Existing Spaceholder Contract are in conflict with the provisions of this Spaceholder Contract. (Spaceholder Contract, sec., 19, p. 6) [the 1923 Contract is identified as the "Existing Spaceholder Contract" in Part 1, sec. 18]

The spaceholder acknowledges that the water storage rights evidenced by permits, licenses and court decrees for the Existing Dam are held in the name of the United States and by this Spaceholder Contract the water rights are reaffirmed and neither the United States, the Constructing Agency, nor the spaceholders are required to make additional filings for the Replacement Dam. (Spaceholder Contract, sec. 49, p. 23)

Despite the decision by the DWA in 1971 that the "Company's rights to water at American Falls Dam and Reservoir are already covered by reason of licenses issued to the United States of America . . .", questions remain as to whether additional SRBA filings by the Company are necessary to protect the Company's power rights at American Falls. Notwithstanding the 1971 decision, the contracts entered into in conjunction with the 1976 Dam Replacement Project reaffirmed the 1923 Contract and granted the Company the right to use water released from the Replacement Dam for purposes of power generation. While our review indicates that the United States holds various water rights at American Falls, only two have stated uses which include power generation. These are Water Rights Nos. 01-02064 (previously Permit No. R-269) and Water Right No. 01-04052, for a 1.8 MAF and 115,000 AF, respectively. Interestingly, the adjudication claim filed by the United States on the oldest power right, A01-02064, does not include power as a stated use. The later priority right, No. A01-04052, for 115,000 AF, does include power and contains the following under the remarks section: "Water furnished to private company for power generation." The amount of storage claimed under this right is significantly less than the 300,000 AF (45,000 primary and 255,000 secondary) of storage rights held by the Company under contract. Additionally, the U.S. has not claimed any flow rights for power purposes.

All of this further confuses and complicates the filings concerning American Falls. We are hopeful that with filing of the referenced claims that these issues can be addressed and resolved in the appropriate forum.

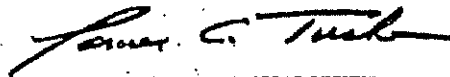
Finally, we are also enclosing the necessary fees for the referenced filings. The Company has previously paid the variable water use fees pursuant to I.C. § 42-1414(1)(b)(ii) and, as such, the enclosed fees for the adjudication claims are remitted under subsection



(1)(a) of that section. The filing fees for the water right application for American Falls are being conditionally paid. If it is determined that the water that is the subject of that application is not required, either based on the enclosed adjudication claims or the contract rights held by the Company, we would expect a remittance of the enclosed fees. In that regard, perhaps it would be appropriate to delay the processing of that application until the issues raised by the adjudication claims filed by both the Company and the U.S. at American Falls are resolved.

We will happy to discuss issues relating to any of the enclosed filings with you at your convenience.

Very truly yours,



JAMES C. TUCKER

Encls.

jct.96\ldwrltr.amf

# **EXHIBIT D**

RECEIVED OCT 11 2001

April 22, 1971

Re: Permit Nos. 01-2041 and 01-2045

Mr. James E. Bruce  
Vice-President and Secretary  
Edco. Paper Company  
Box 74  
Dodge, Idaho 83407

Dear Mr. Bruce:

Enclosed you will find a Recommendation Decision cancelling the two above referenced permits.

If you have any questions, please feel free to contact our office.

Very truly yours,

R. KEITH MCCORMICK  
Director

RTK:dkh

Enclosure

cc. U. S. Bureau of Reclamation

01-20

RECEIVED OCT 15 2001

BEFORE THE DIRECTOR  
OF THE  
IDAHO DEPARTMENT OF WATER ADMINISTRATION

In the Matter of Permit Nos. )  
01-2041 and 61-2065 in the )  
name of IDAHO POWER COMPANY )

MEMORANDUM DECISION

On March 17, 1921, Idaho Power Company submitted Applications to the Idaho Department of Reclamation (renamed Idaho Department of Water Administration) requesting authority to divert 1200 cubic feet per second of water and to store 300,000 acre-feet of water to be used for power purposes. The water was to be diverted and stored in the S<sup>1</sup>S<sup>2</sup> Section 30, Township 7 South, Range 51 East, B.M., in Power County for use at the proposed reservoir site and at several sites downstream. Pursuant to these Applications, Permit Nos. R-273/01-2065 and 15201/01-2041 were issued by the Department.

On June 20, 1931, the applicant submitted Proofs of Completion of Works claiming that the works had been completed as required under the provisions of Permits 15201/01-2041 and R-273/01-2065. On September 29, 1932, the Department of Reclamation informed the permit holder that it intended to reject the Proofs of Completion of Works and refuse to issue a Certificate, since a Certificate of Completion of Works had previously been issued to the United States of America, Bureau of Reclamation, for the full capacity of the reservoir constructed at the proposed site. The Department further informed the Idaho Power Company that it appeared that the Company's rights to divert and store water at that location had been waived and compensated for by contractual agreement between the Company and the United States.

In July of 1967, the Department requested that the Company review the matter and give comments prior to action being taken to cancel the permits. Correspondence was received from the Company, on November 9, 1967, asking the Department to issue the required Certificate to complete the permits and contending that Licenses should be issued.

On October 1, 1970, an Order to Show Cause why the permits should not be cancelled was issued to Idaho Power Company by the Department. On December 1, 1970, a brief was timely submitted by the Idaho Power Company setting forth, among other things, the terms and conditions of agreements between the Company and the United States.

STATE OF IDAHO  
DEPARTMENT OF WATER ADMINISTRATION

Statehouse - Annex 2  
Boise, Idaho 83707  
(208) 384-2215



R. Keith Higginson  
Director

Water Rights Administration  
Water Resource Investigations  
Dam and Reservoir Safety  
Water Well Drilling  
Flood Plain Management  
Irrigation and  
Flood Control Districts

IN THE MATTER OF CANCELLATION OF PERMIT )  
TO APPROPRIATE THE PUBLIC WATERS OF THE )  
STATE OF IDAHO NO. R-273/01-2065 )  
IN THE NAME OF Idaho Power Company )  
\_\_\_\_\_ )

ORDER OF CANCELLATION

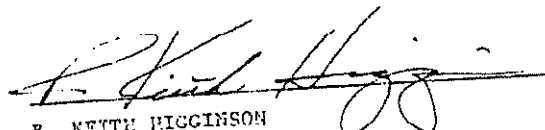
WHEREAS, the permit holder has failed to submit adequate proof of  
completion of works due June 21, 1931 ; and,

WHEREAS, on October 1, 1970 notice was sent to the holder of said  
permit to appear before the Director of the Department of Water Administration  
on or before December 1, 1970 to show cause why said permit should not be  
cancelled; and,

WHEREAS, the holder of said permit has failed to comply with the require-  
ments of said permit and has not shown adequate cause why such permit should not  
be cancelled;

IT IS THEREFORE ORDERED and Permit R-273/01-2065 is hereby CANCELLED.

Dated this 22nd day of April, 19 71.

  
R. KEITH HIGGINSON  
Director

01-2065

STATE OF IDAHO  
DEPARTMENT OF WATER ADMINISTRATION

Statehouse - Annex 2  
Boise, Idaho 83707  
(208) 384-2215



R. Keith Higginson  
Director

Water Rights Administration  
Water Resource Investigations  
Dam and Reservoir Safety  
Water Well Drilling  
Flood Plain Management  
Irrigation and  
Flood Control Districts

IN THE MATTER OF CANCELLATION OF PERMIT )  
TO APPROPRIATE THE PUBLIC WATERS OF THE )  
STATE OF IDAHO NO. 15201/01-2041 )  
IN THE NAME OF Idaho Power Company )

ORDER OF CANCELLATION

WHEREAS, the permit holder has failed to submit adequate proof of  
completion of works due June 21, 1931 ; and,

WHEREAS, on October 1, 1970 notice was sent to the holder of said  
permit to appear before the Director of the Department of Water Administration  
on or before December 1, 1970 to show cause why said permit should not be  
cancelled; and,

WHEREAS, the holder of said permit has failed to comply with the require-  
ments of said permit and has not shown adequate cause why such permit should not  
be cancelled;

IT IS THEREFORE ORDERED and Permit 15201/01-2041 is hereby CANCELLED.

Dated this 22nd day of April, 19 71.

A handwritten signature of R. Keith Higginson in dark ink, written over a horizontal line.  
R. KEITH HIGGINSON  
Director

CI- 3091

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER ADMINISTRATION  
OF THE  
STATE OF IDAHO

IN THE MATTER OF PERMITS  
NO 15201/01-2041 and  
R-273/01-2065 in the name  
of IDAHO POWER COMPANY

ANSWER TO ORDER TO SHOW CAUSE

COMES NOW, IDAHO POWER COMPANY (hereinafter called "Company") and for its answer to Order to Show Cause as to why Proof of Completion of Works should not be rejected and Permits 15201/01-2041 and R-273/01-2065 cancelled, states and alleges as follows:

I

That the Company, or its predecessors, in 1901 commenced construction of generating plant at American Falls, Idaho, known as the "Island Plant." As power requirements increased, this plant was supplemented by construction at American Falls of the "West Side Plant" and, subsequently, the "East Side Plant."

That prior to June 15, 1923, the Company owned and operated a dam and the three power plants with a total of 4,040 KW generating capacity at American Falls. These plants provided the Company's entire power generation for the American Falls-Blackfoot-Pocatello area, and were a source of large potential development to serve the future power needs of southeastern Idaho.

That the Power Company was preparing to enlarge its dam and generating stations to meet the rapidly growing power demand. Its plans included a storage reservoir which would not only make possible the installation of additional power capacity at American Falls to meet local needs, but also would have served to increase the firm capacity of its downstream plants at Shoshone, Lower Salmon and Swan Falls.

II

That the Company had made or acquired various filings and/or rights on waters of the Snake River for storage and use

of such water for power production at its existing plants and also for its proposed plant expansion, as follows:

- (a) Appropriation under Water Location by Andrew J Tarbet for 6000 cfs of the waters of Snake River on July 15, 1901, recorded in Blaine County, Idaho, in Book 4 of Water Rights at Page 266.
- (b) Appropriation under Water Location by J E Brady for 2000 cfs of the waters of Snake River on August 1, 1901, recorded in Blaine County, Idaho, in Book 4 of Water Rights at Page 265.
- (c) Permit No 4168 for 6000 cfs of the waters of Snake River, issued by the State Engineer of the State of Idaho to American Falls Power Company on Application filed September 3, 1908.
- (d) Permit No 14067 for 4600 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed April 7, 1919.
- (e) Permit No 13947 for 1500 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to E C Kiersted on Application filed December 26, 1918.
- (f) Permit No 14909 for 500 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed June 25, 1920.
- (g) Appropriation under Water Location by I B Perrine for 1000 cfs of the waters of Snake River on November 1, 1901, recorded in Lincoln County, Idaho, in Book 1 of Water Rights at Page 241.
- (h) Appropriation under Water Location by Arturus Z Conrad for 1000 cfs of the waters of Snake River on September 13, 1902, recorded in Lincoln County, Idaho, in Book 1 of Water Rights at Page 251.
- (i) Permit No 14881 for 1000 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed August 9, 1920.
- (j) Permit No 13948 for 5000 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to E C Kiersted on Application filed December 26, 1918.
- (k) Permit No 3685 for 6000 cfs of the waters of Snake River, issued by the State Engineer of the State of Idaho to Fentress Hill on Application filed May 11, 1908.
- (l) Appropriation under Water Location by Joseph H Hutchinson for 10000 cfs of the waters of Snake River on January 17, 1900, recorded in Owyhee County, Idaho, in Book 3 of Water Rights and Mill-sites at Page 750.



- (m) Appropriation under Water Location by Joseph H Hutchinson for 10000 cfs of the waters of Snake River on May 4, 1900, recorded in Owyhee County, Idaho, in Book 3 of Water Rights and Millsites at Page 761.
- (n) Permit No 14362 for 4000 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed July 29, 1919.
- (o) Permit No 15201 by Idaho Power Company according to Application No 21476 filed on March 17, 1921.
- (p) Permit No R-273 by Idaho Power Company for storage of 300,000 acre feet per annum of the waters of Snake River filed on March 11, 1921 and approved on June 28, 1921.

### III

This was a period of rapid growth in southern Idaho, and the need for additional water for irrigation development was increasing. American Falls was selected by the Bureau of Reclamation as an ideal site for a large and economical reservoir for the storage of water for irrigation use. The United States of America, acting through its Secretary of the Interior, and pursuant to appropriate acts of Congress determined to build a large irrigation storage reservoir at American Falls, using as a part of its reservoir land owned by the Company. This reservoir would require the destruction of two of the Company's plants (West Side and Island plants) and would prevent the Company from developing its own storage reservoir for power production. The Company already owned much of the necessary lands and flooding easements, which it had purchased and obtained for its own reservoir development.

### IV

That in order to enable the United States of America to construct the irrigation storage reservoir, the United States and the Company developed a plan under which the Company reserved its existing water rights, and conveyed the necessary portions of its real property and easements to the United States. The Company

retained its East Side generating station with its appurtenant diversion dam, and was guaranteed by the United States the right to the amount and time of use of its reserved water rights. To effectuate this plan a contract was entered into between the United States and the Company on the 15th day of June, 1923, a copy of which is hereto attached as Exhibit A and is hereby made a part of this answer.

v

That under the said contract the Company's rights to storage in the reservoir to be constructed by the United States to the extent of the 300,000 acre feet covered by Permit No R-273 issued by the Commissioner of Reclamation of the State of Idaho under the date of June 28, 1921, were preserved, defined and specifically provided for as follows:

"In part consideration for the rights and property to be conveyed to the United States by the Company, and as a part of the cost of the proposed development at American Falls the United States grants to the company and the company shall be entitled to the perpetual use of 45,000 acre-feet of storage capacity in the reservoir to be constructed by the United States, such capacity to be for storing the water reserved to the company, and the water referred to in the last sentence of Paragraph 10, the company's right to such storage capacity to be on an equal basis in all respects, except as otherwise provided herein, with other primary storage capacity rights in the reservoir, as defined in the contracts between the United States and the Irrigation Companies and Districts cooperating with the United States in the construction of said reservoir, a form of which contract is attached hereto and marked Exhibit 'C'." (paragraph 16, pp 17 and 18, Exhibit A)

"Between October 1st of any year and June 10th of the following year, the company shall have and is hereby granted for the purpose of regulating and controlling the water reserved to the company under Paragraph 19 hereof, and the water which may be acquired under the last sentence of Paragraph 10, a secondary right to use not to exceed 255,000 acre-feet of storage capacity in the reservoir when such capacity is not then required and not being used by the owners of irrigation rights to the use of such capacity, but shall have no further right to use any part of said 255,000

acre-feet of capacity or any water stored therein after the reservoir is first filled each season, and the company shall in any event release on April 1st of each year all right and claim to such capacity and water stored therein, except 60,000 acre-feet, and shall release all right and claim to the remainder, if any, on June 10th of each year." (paragraph 18, p 19, Exhibit A)

That said contract specifically provided that the Company was not surrendering, or in any way disposing of its existing water rights but was only permitting the United States to use them in connection with its American Falls Reservoir, subject, however, to the Company's reserved rights as follows:

"WHEREAS the company has at American Falls water filings prior to the American Falls filings of the United States sufficient to embrace the entire amount of water reserved to the company under this contract." (paragraph 6, pp 2 and 3, Exhibit A)

"(d) All the company's water rights, appropriations water filings and permits, at American Falls, or used or intended to be used in connection with the company's power plants and proposed plants at American Falls, except the rights, whether primary or tertiary, expressly reserved to the company, as hereinafter set out. The water rights of the company transferred to the United States for use for power purposes shall be considered as impressed with a right in the United States to change the use of such water from power to irrigation or to store the same for irrigation whenever the Secretary of Interior shall decide that such water is required for irrigation purposes. But it is expressly agreed and understood that the water rights and rights to the use of water which it is herein agreed that the Company shall have are reserved out of its existing appropriations and rights as independent rights under its own filings and appropriations and of the dates of priority to which the Company is entitled under such appropriations and are not to be considered as mere contract rights under contract with the United States." (paragraph 9(d), p 11, Exhibit A)

"It is the intent of this agreement that all power rights at American Falls except those granted to the United States herein shall be reserved to the company and that the deeds and conveyances by the company to the United States may contain a reservation in favor of the company of the rights reserved to it under the provisions of this agreement." (paragraph 30, p 30, Exhibit A)

VI

That as a part of the plan for the American Falls reservoir the United States had applied for and received from the Commissioner of Reclamation of the State of Idaho, under the date of March 30, 1921, Permit No R-269 for the storage of 1,700,000 acre-feet in said reservoir and Permit No 15134 for direct diversion of 8,000 second feet in connection therewith.

That the existence of the Company's permits and water rights described in paragraph II, supra, were known to the parties at the time of the execution of the contract of June 15, 1923 (Exhibit A hereto), and the contract provisions referred to in paragraphs IV and V, supra, for protecting the Company's right to 300,000 acre-feet of storage covered by its Permit R-273 contemplated that said storage water was included in and formed a part of Permit R-269 and would be provided to the Company from waters stored under Permit R-269.

That in fact, while all the Company's reserved rights were considered in the contract (Exhibit A hereto), the contract specifically provided that said rights were reserved and were " \* \* \* not to be considered as mere contract rights \* \* \*."

VII

That the said reservoir was subsequently constructed and thereafter the United States made all necessary proofs required by the laws of Idaho and proper licenses have been issued to the Secretary of the Interior for the waters covered by Permit Nos R-269 and 15134.

VIII

That in addition to the aforementioned contract with the Company, the Secretary of the Interior entered into numerous contracts with irrigation districts, canal companies and individuals wherein he agreed to make available to them for irrigation use on lands irrigated by them, specific quantities of storage space and

the waters annually stored therein, and that at the present time there are such contracts outstanding covering substantially all of the capacity of said reservoir.

IX

That by operation of law the Secretary of the Interior holds the water available in American Falls Reservoir under Permit Nos R-269 and 15134 as trustee for the Company and all other contract holders. The Company has continuously applied to a beneficial use its rights in said stored water, as have all other contract holders; and the Company and all other such contract holders are the equitable owners of the right to so use these waters.

X

That a decree was entered in the District Court of the United States for the District of Idaho, Eastern Division, on June 25, 1929, in an action entitled Woodville Canal Co, Plaintiff, versus Clark and Edwards Canal and Irrigation Co, et al, Defendants, adjudicating water rights in Snake River at and above Milner Dam, including those at American Falls. That the numerous parties to said action included many of the water users on the river who claimed rights in American Falls Reservoir, together with the Secretary of the Interior. In such action a stipulation was entered into which was incorporated in the decree which read in part as follows:

"It is further stipulated and agreed that there shall be decreed in the above entitled cause of action, to the Secretary of the Interior of the United States, and his successors in office, for use upon the various projects which have heretofore or may hereafter become entitled to the same by reason of contracts with the United States therefor, the water filed upon by the United States in connection with the construction of the American Falls Reservoir under permit number 15134, and reservoir permit number R-269, under date of priority of March 30th, 1921, the amount of water to be decreed to the Secretary of the Interior of the United States and his successor in office for such use under said date of priority of March 30th, 1921, to be One Million Seven Hundred Thousand (1,700,000) acre-feet per annum for storage in the

American Falls Reservoir and Eight Thousand (8,000) second feet for direct diversion. It is understood and agreed that paragraph two hereof does not apply to the said rights of priority of March 30, 1921, provided for in this paragraph or the rights decreed in the Foster and Rexburg decrees."

"It is stipulated and agreed that the rights of contract holders and any others beneficially interested, now or hereafter claiming or having storage reservoir rights in American Falls Reservoir shall not be affected or determined by the decree to be entered in this action, as to the use to be made of the waters decreed, under such decree, to the Secretary of the Interior under permits described in paragraph No. 4, of this stipulation, the same being permits No. 15134 and R-269."

and concerning which the decree provided:

"Now therefore, the said stipulation is hereby approved and confirmed by the Court and adopted as a part of this decree, \* \* \*."

WHEREFORE, the Company hereby requests that the Director of the Department of Water Administration enter an order finding (a) that all of the rights of the Company covered by Permit Nos R-273 and 15502 have been merged into rights granted to the Secretary of the Interior in Permit Nos R-268 and 15134; (b) that the Secretary of the Interior holds and maintains the rights under said permits as trustee for the Company of all of the rights covered by Permit Nos R-273 and 15502; and (c) that in accordance therewith no further action need be taken with respect to Permit Nos R-273 and 15502.

Dated this 1st day of December, 1970.

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R P PARRY  
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